S. HRG. 100-418

STUDY OF POLITICAL ADVOCACY IN THIRD-CLASS NONPROFIT MAIL

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

OCTOBER 6, 1987

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

79-319 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-22

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STUDY OF POLITICAL ADVOCACY IN THIRD-CLASS NONPROFIT MAIL

TUESDAY, OCTOBER 6, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor, Stevens, and Sasser.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The hearing will be in order. On our agenda this morning is an item relating to the study of political advocacy in third-class nonprofit mail.

The Subcommittee is holding today's hearings at the request of my distinguished colleague, Senator Stevens. As many of you know, Senator Stevens has been a major force in the postal arena for many years, and I can say without reservation that there is no one in the United States Senate who knows more about these issues than Senator Ted Stevens.

Last year, as the Chairman of this Subcommittee, Senator Stevens asked the Postal Rate Commission (PRC) to conduct a study on the extent to which nonprofit mail was being used to convey or advocate political opinions and to recommend legislative strategies in the event Congress were to determine that eligibility limitations were warranted.

The PRC report is being released today. It is helpful in at least two important ways. First, it gives Congress a quantitative analysis of the extent of political advocacy among nonprofits, so we can now proceed from an enlightened vantage point on the numbers involved. Second, it contains a discussion of First Amendment problems which should be avoided if Congress considers legislation to limit public subsidy of such mailings.

In my view, of fundamental importance to any question of legislative action are the constitutional dictates of the First Amendment. Even if we determine, therefore, that political advocacy in nonprofit mail should be limited from a pure budgetary standpoint, we must proceed very carefully. Such care is required since the result of any congressional action may in fact reduce the ability of certain groups to engage in political discourse.

We are very pleased to have with us today the very distinguished Chairman of the Postal Rate Commission, Janet Steiger. I want to commend Chairman Steiger and her staff for this outstanding report. It should be noted that in 1986 the PRC released another important document, "Report to the Congress: Preferred Rate Study," which was a comprehensive examination of preferred postal rates. As Chairman of the Subcommittee with jurisdiction over the Postal Service, I consider it vitally important for Congress, the taxpayer and the average mailer that there is a resource we can turn to for an objective analyses of complicated and possibly contentious postal economic issues. The PRC, in my view, continues to be that important source.

Again, we look forward to hearing from Chairman Steiger, but first, let me ask Senator Stevens to make any opening remarks, if he so desires.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Mr. Chairman, thank you for holding this hearing so promptly at my request. I wanted to see if we could find some way to make certain that the report prepared by the Postal Rate Commission received fairly widespread attention, and in particular to give an opportunity for those who might want to comment on the report to do so. I do not know if anyone other than the Commission has responded to this hearing notice.

Thank you, Ms. Steiger, for your willingness to come here with your colleagues. We know that you have a major postal rate case pending and your time is very valuable.

We have a very tough task in this Committee at times in finding the money to meet the budget requirements under our jurisdiction. One of the reasons I wanted this report was to demonstrate what I believed was an abuse of the use of subsidized mail hoping that we could get the other members interested in the process so that next year when we have to reduce some of the costs in our jurisdiction we can look long and hard at this practice outlined in this report.

The idea of the taxpayer subsidizing groups that form voluntarily to conduct lobbying activities or political activities is wrong. I may have told you before about the young man I know in Alaska who yearly sends out a request for charitable contributions to a nonprofit corporation he organized to protect the Alaskan environment against the action of the State of Alaska. He receives a substantial national response and then he turns around and hires a person he considers to be the perfect bright young attorney to represent that nonprofit corporation—himself. In short, his substantial salary is a result of a subsidized direct mail solicitation at taxpayers' expense.

Now, I think that that kind of thing ought to be exposed, and I also believe that we ought to look into this whole question of the types of mailings that are sent.

For instance, this piece in particular.

[Senator Stevens displays sample mailing.]

Senator STEVENS. This one is well known. You have seen this or similar ones. But I am surprised at the fact that this—a national mailing at subsidized rates—it cannot go through the mail process-

ing machines. It actually increases the cost to the Postal Service and the taxpayers when an organization using subsidized rates urging political action, mails odd sized pieces. The whole purpose of these mailings is political action.

So it seems to me, Madam Chairman, that you have a good report. I look forward to your statement, and I look forward to working with you, Madam Chairman, on it.

When it comes time to find the savings we must find under the Budget Act, there is a good $100 million here that we can save the taxpayers if we follow the suggestions in your report.

So we are pleased to have you all here. Thank you, Ms. Tyson and Mr. Crutcher, also, for joining in, and we are happy to have the hearing.

Senator PRYOR. Senator Stevens, if you would allow me a personal note, 20 years ago in 1967 the late Congressman William Steiger, from Wisconsin, and I came to the House of Representatives together and this is when I got to know our very distinguished Chairman of the Postal Rate Commission.

We are very pleased to have you here and look forward to your statement.

TESTIMONY OF JANET STEIGER, CHAIRMAN, POSTAL RATE COMMISSION,[1] ACCOMPANIED BY COMMISSIONERS PATTI BIRGE TYSON, HENRY FOLSOM, AND JOHN W. CRUTCHER

Ms. STEIGER. Thank you, Mr. Chairman and Senator Stevens.

Before we begin, I would like on behalf of my colleagues to thank you all for the opportunity to be here for the hearing of Commissioner nominee Trey LeBlanc. We very much look forward to serving with him, to having him join us as our colleague, and we know that he will make substantial contributions to the work of the Commission. We congratulate him on appearing here this morning.

It is a pleasure as always, to be here, to discuss the study we made at Senator Stevens' request on the use of reduced-rate third-class mail for political advocacy. As the Committee knows, we had assembled a data base for our broader study of preferred-rate mail, mandated by the Omnibus Budget Reconciliation Act of 1985 and completed in June of 1986. Senator Stevens' letter of September 9, 1986 requested a further analysis of these data from the political advocacy point of view. I have attached that letter to my prepared statement.

While today I will be discussing empirical statistics and to a small extent some general legal questions, I would make one request. As you all know, and as Senator Stevens noted, we do have an omnibus rate case before us and we just cannot comment on the merits of any question that is or may become an issue in that case.

By way of background, let me describe how we assembled our data base. I think it is important to those who will look at this report with an analytical eye.

So as to have a representative collection of nonprofit mailers, we employed a two-stage probability sampling strategy. Using Postal Service data on third-class revenues for every post office in the

[1] See p. 17 for Ms. Steiger's prepared statement.

country, a first stage stratified sample of 50 post offices was drawn from that list. A stratified sampling approach, in which a given post office was more likely to be selected if it had a large mail revenue, was used to increase the efficiency of our sampling.

From within the 50 primary-stage sample post offices, a second stage sample of 2,520 nonprofit organizations was selected. They were taken from a Postal Service list of all third class nonprofit permit holders, which also identified the post office that was used by those organizations.

Besides the probability sampling of 2,520 mailers, we added 35 very large volume mailers. The sample includes some of each type of eligible organization—religious, education, scientific, agricultural and so on—and these types of organizations are defined, by the way, in the Postal Service's "Domestic Mail Manual," and I have attached those pages to my statement as well.

Each mailer in the sample was asked for a piece from each mailing sent at the nonprofit bulk third-class rate between March 16, 1985 and March 14, 1986, together with a copy of the associated mailing statement, which is known as Postal Service Form 3602. We needed these forms to determine and cross-check the volume for each mailing in this study.

Fifty-one percent of our list of organizations responded, and the sample comprises 18,550 mailings accounting in total for 980 million mail pieces. I would note that represents almost one-tenth of the third-class nonprofit mail stream. This was a big sample. All 9 categories of eligible organizations were represented, but the response rate from qualifying political committees was too low to be of any use for our report on political advocacy mail. We received responses from only 5 of the 100 organizations contacted. They are, as you know, the National and State political committees and the Congressional campaign committees who were made eligible for nonprofit rates in 1978 by Public Law 95–593.

As is customary in the survey profession, we as the client had an intermediary analyze the sample mail pieces. This was to guarantee anonymity and confidentiality of all the participants, who we stress were voluntary participants. In the present study as well as in the June 1986 study we contracted this work to be done by an experienced survey research organization.

Since third-class mail is very diverse, a good deal of categorizing clearly had to be done before any useful conclusions could be drawn, so with the help of a consultant we drew up a coding sheet for the data analysts to use in examining the mail pieces themselves.

In practice, a coder examined a mail piece and answered all of the items on the coding sheet. These answers, in the aggregate, underpin the statistical tables in the study and hence the conclusions we were able to draw. The process reflects some important definitions we adopted for the purpose of this study.

To begin with, not all political advocacy, as you know, is of the same type. Our first level division was into action advocacy and opinion advocacy. Action advocacy tries to bring about some action by the recipient to support the sender's political position: Write to your Congressman, send a contribution, march in a demonstration and so on. Opinion advocacy tries to influence the recipient's belief

in a direction consistent with the sender's political position without asking for any particular action.

Because of an historical and legal distinction among forms of political action, we further subdivided the action advocacy category. Some forms of political action are addressed to Governmental decision makers directly or indirectly. Writing to a Senator or a Representative, whether in your own words or simply by sending a preprinted coupon or postcard supplied by the advocacy organization is one example. Urging participation in a telephone campaign or a demonstration is another. And this general category is sometimes referred to as lobbying—using the word, obviously, in a very broad sense—in contrast to other forms of political action, such as attending a rally not directed at influencing a Government body, or sending money to a cause.

In summary, therefore, we divided appeals to opinion and belief from calls to action, and subdivided the latter into contacting—in person, by letter, by telephone, fund raising, voting, and generalized support. This let us estimate what political advocacy mailers want to achieve by their mailings.

Another important analytical dimension is the type of issue involved. You can probably find a political aspect to almost anything, so categorizations cannot be too rigid. But we did settle on four broad areas: Environmental issues, including conservation, occupational health, nuclear power and so on; economic issues, such as welfare, unionization, migrant labor, employment discrimination, import curbs, the budget, and subsidies; non-economic social issues like educational quality, school prayer, gun control, the Equal Rights Amendment, or abortion questions; all other issues, which would encompass, for example, defense and foreign policy questions.

Data organized this way helped us to see where the mailing groups hoped to make a difference.

A third dimension was pre-established for us by the existing postal law: the eight traditional categories of eligible nonprofit organizations, plus political party committees. The "Big Eight" are religious, educational, scientific, philanthropic, agricultural, labor, veterans' and fraternal bodies. As I noted, we did not get from the political party committees enough response to be statistically usable for a study of political advocacy. This was not a problem, by the way, Senator, in our initial study, the broader question of the study of advertising, since the extent of participation by the committees would have made little difference to our conclusions on that issue.

Even if we had had a statistically usable response, however, I suspect we would have treated the party committees separately in this study: their relationship to political advocacy is obviously different from that of a scientific or philanthropic organization and their entitlement to the nonprofit rate had very different historical roots.

So the qualitative parameters were: who the mailers are; what problems they are interested in; and what they want those they address to do about those problems. Obviously, we used quantitative measures as well. In particular, we organized the data to show

four: the percent of mail pieces; the percent of mailings; the percent of nonprofit organizations; and the percent of references.

This, we know, makes the study a little difficult to use because you are constantly going from one to the other to compare the organization chart with the percentage of mailings and volume, but we are going to try and help this morning if there are any questions on that.

A "reference," by the way, is an individual item of political advocacy—perhaps one of several within a mail piece. An envelope that contained both a letter arguing against construction of more nuclear plants and a flyer urging the recipient to join a march on Washington protesting world hunger would be one mail piece but would be counted as two references.

"Percentage of nonprofit organizations" refers to the proportion of eligible bodies within that category that send the particular subtype of mail in question. For instance, Table 3 shows that 13 percent of all nonprofits sent political advocacy mail of some kind. Thirty-three percent of agricultural organizations, but only 6 percent of scientific nonprofits, sent action advocacy.

Finally, counting mailings as well as absolute volume of mail pieces gives us some idea of how political advocacy mail is distributed. Summary Table A, for example, shows that while 60 percent of the pieces sent by agricultural organizations contain advocacy, only 23 percent of their mailings do. And I would add that 23 percent of their mailings only account for 4 percent of the total volume of non-advocacy mail.

This suggests that, for these entities, political advocacy tends to be concentrated in a relatively restricted number of large mailings. The same table indicates that labor organizations' political advocacy tends to be more evenly distributed: it is found in 23 percent of the mailings and 24 percent of the pieces.

Three general conclusions seem to emerge with special prominence from the statistics. First, political advocacy is a major use of the nonprofit third-class category. Twenty-one percent of all nonprofit third-class pieces contain political advocacy of one kind or another.

Second, a fairly significant proportion of eligible nonprofit organizations take advantage of the reduced rate for political advocacy. As noted, we found 13 percent of the organizations in our sample had used it for this purpose. And finally, political advocacy seems to be correlated with large mailings. The 13 percent of eligibles who sent political advocacy and the 21 percent of gross volume that contains advocacy account for only 7 percent of the separate mailings. As we often say, there are some elephants out there.

Obviously, with 8 major types of nonprofit organizations represented in this study there are going to be differences in detail and usage, and you can get an overview of this from Summary Table A and Summary Table B which gives a breakdown by issues.

Action advocacy references occurred in about 12 percent of the mail pieces, versus opinion advocacy references, which coincidentally, appear in another 12 percent. Some had both, which is why 12 and 12 in this case add up to 21, not 24. And Table 7 reflects the subdivision of action advocacy into types of action sought by the mailer. It indicates that 23 percent of action advocacy pieces ask

the recipient to send a prepared form or card, 23 percent called for an original letter, 8 percent requested a call or a telegram, and only 1 percent suggested participation in a demonstration at a Government site.

Table 8 distributes these forms of advocacy across selected types of political issues, and it seems clear that arousing interest in directly approaching Government with petitions, complaints, or expressions of support is a not insignificant use of this nonprofit rate.

I realize it is going to be very little, if any, relief to move from statistical technicalities to legal ones, but the quantitative significance of political advocacy prompts a word or two on this subject. The legal appendix to our study points to some constitutional questions that should be considered in drafting any restriction on political express through nonprofit mail. It emerged in the course of research that lobbying has been traditionally regulated more than political speech in general—by both rules governing direct approaches to Congress and the restrictions of the Internal Revenue Code on nonprofit tax exemptions for organizations which lobby.

Incidentally, the tax code's definition, which nearly every executive in the nonprofit sector must have some familiarity with, would encompass much of the grass roots activity we find in the mail we studied.

Related to this is the constitutional principle that burdens on protected speech should be no broader than necessary. If restrictions are contemplated on political expression in subsidized preferred rate mail, we would urge that they affect specific mailings containing the defined type of advocacy and not the overall eligibility of the organization for subsidized rates. This focus may well require both a degree of self-policing by mailers and somewhat more enforcement by the Postal Service. But the way to end the subsidy for political advocacy, or some portion of it, is to charge regular non-subsidized rates for the mail containing it. In other words, to target the advocacy and not the advocate. Punishing, so to speak, the mailer by revoking its eligibility to mail anything at the nonprofit rate looks dangerously like penalizing political speech.

I thank you, gentlemen. That concludes my prepared remarks. We are ready to answer any questions that we can for you this morning.

Senator PRYOR. Ms. Steiger, we thank you for your statement.

Your report states that 21 percent of the total number of nonprofit mail pieces carries a "political" message of some sort. Now, are you saying or does the report say, that 21 percent of mail is exclusively political in nature?

Ms. STEIGER. No. It says that 21 percent of the mail contains at least one reference that we would categorize as political advocacy. It may contain more than one reference, and we cannot tell you how much lineage that involves or what percent of the piece, but it does indicate that it contains at least a reference categorized by our coders as political.

Senator PRYOR. Some people may think that in looking at this particular report we could cut revenue foregone by some 21 percent if we prohibited nonprofit political mail. To the extent we are dealing with mixed mailings, containing both political and non-political

information, am I correct in concluding that we would not necessarily realize any savings in revenue foregone?

Ms. STEIGER. As Commissioner Folsom carefully noted in his analytical evaluation of what could be saved by eliminating commercial use of the mail stream by the nonprofit subsidized categories, we cannot predict the future of the mail stream or the conduct of the mailers. You are quite right, Senator, that it might be that those sending political advocacy would either delete it from a piece and send the piece without it, or they might cease to send the piece. We cannot predict their behavior.

What the figure of potential savings means is that if all political advocacy mail disappeared, the 21 percent of the subsidy implicitly assisting it would be saved by whatever amount that is at the time of action.

Senator PRYOR. Ms. Steiger, I appreciate very much your coming today and bringing your colleagues with you. It is going to be necessary for me to excuse myself now. I will state that Senator Sasser of Tennessee will have two or three questions he would like to submit in writing. We will submit those in his behalf.[1]

I now turn the hearing over to Senator Stevens who will ably chair it from here on in. We have representatives of the Little Rock Chamber of Commerce who are spending 3 or 4 days here, and I am due in a 10:30 slot to visit with them so I do have to excuse myself. I apologize.

Ms. STEIGER. Thank you, Mr. Chairman.

Senator PRYOR. Senator Stevens?

Senator STEVENS [presiding]. Thank you, Mr. Chairman.

As I said, I appreciate your willingness to have this hearing.

I understand your answer to the question that the Chairman just asked, but it is true that each organization is saving money by virtue of these mailings. How much money is saved, approximately, by using the nonprofit rate as opposed to the regular commercial rate for this type of mailing?

Ms. STEIGER. Senator, we can submit, and we will be happy to, a comparison of the whole rate structure of nonprofit versus bulk regular third-class mail. But if I could, I think one example gives a fair picture of the difference.

We know that nonprofit mail is mainly 5-digit pre-sort and we know that some 95 percent of it is lightweight; it is beneath the so-called breakpoint of 3.5 ounces. So if we take a comparison of a piece, between a half-ounce and one ounce, of 5-digit pre-sort, regular bulk mail, we would see that rate would be 10.1 cents a piece at current rates. The rate for a 5-digit pre-sort piece between half an ounce and an ounce, of nonprofit mail would be 7.1 cents. That is a rate preference of 29.7—almost 30 percent for the nonprofit piece.

This is a rather consistent phenomenon throughout the chart. We would be happy to submit that comparison for the record.[2]

Senator STEVENS. Well, I happen to believe these people are going to mail their advocacy pieces anyway. It is just a question of whether they pay for the privilege or let the taxpayers.

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[1] See p. 35.
[2] See p. 40.

Senator Sasser, did you have some questions you want to ask? I would be willing to yield to you.

Senator SASSER. No, Senator Stevens, not at the present time. Thank you.

Senator STEVENS. The educational organizations that account for a significant part of political mailing. Do you mean the educational concept that we normally would think of in our society, that of colleges, universities, and schools? How do you define education under that concept?

Ms. STEIGER. That may be the $64,000 question. When we initiated a look at this data a year or a year and a half ago, we found the definitions of nonprofit organizations, which are contained in the "Domestic Mail Manual," including the educational category. We looked at them all and discovered that educational is the most miscellaneous. If we think of education, as I often do, as an institution that provides a teacher/student relationship, "education" as a category for nonprofit is far, far broader than that.

It can be qualified as education because it provides information to the public on a variety of issues or a single issue. So you have everything from organizations providing environmental education, on up and down the road. It is not limited, Senator, to a traditional educational institution as I would think of it. It is a very broad category.

Senator STEVENS. Well, what I am wondering, if education is broad enough to cover political advocacy, would it be impossible to achieve the goal that I am talking about of trying to make those who are involved in political advocacy pay the full price for using the mail?

Is educational so broad that it would include political education?

Ms. STEIGER. I do not know the answer to that, but it is extraordinarily broad. When the Postal Service initially began to attempt to administer the admission of nonprofit into the mail stream as a preferred rate organizational category, it limited the definition to the traditional provider of education with a student/teacher relationship; and that definition just grew and grew and expanded. If you read it, you see it is about the broadest definition for subsidy that you can find.

It is, by the way, patterned after the IRS rule for nonprofits.

Senator STEVENS. I understand you asked for the nonprofits to be cooperative and give you a copy or example of each mailing, is that right?

Ms. STEIGER. Yes, sir.

Senator STEVENS. And some 50-odd percent cooperated?

Ms. STEIGER. Yes, sir, somewhat over 50 percent of the sample we drew, which is a statistically reliable sample.

Senator STEVENS. And you have extrapolated from your examination of what you received the volume as applied to the whole?

Ms. STEIGER. Yes, sir.

Senator STEVENS. Your comments this morning would indicate that the political parties mailings that were authorized in 1978 by definition that would be political, would it not? They did not give you much information, I take it.

Ms. STEIGER. They did not, sir. We had, in the initial study, simply to take estimates provided by the Postal Service as to the

volume of that mail, both in an election year and in an off-election year, and as to the possible impact on subsidy of that mail. We would doubt that it biased this report too much. It is a small category.

The Postal Service estimates about 300 million pieces of mail in an election year and we would presume that—the nature of the parties being political—there would be a fair amount of advocacy in it. But because of the impact that could have on our generalized figures of 21 percent of the mail stream having some advocacy in it, we just simply did not use it in this report. We did not have enough information for it to be reliable. I wish we did.

Senator STEVENS. I take it that you members of the Commission are concerned about revenues for the Postal Service in general. Do you examine the cost of the various aspects of the Postal Service such as the nonprofit category?

Ms. STEIGER. Yes, sir. The Postal Service, as you know, maintains a wide-ranging data collection system. We know, by the way, that there is some small but quantifiable difference between the attributable costs of nonprofit mail and regular bulk third-class mail. Nonprofit is about 4.9 percent lower in attributable costs. We suspect this is because it is mainly letter-shaped mail and it is fairly lightweight. That is not a tremendously high difference but it does account for some differing costs between the two.

We look very carefully at items such as that, yes, sir.

Senator STEVENS. You say that you have about 300,000 nonprofit permits. Do they have to be renewed annually?

Ms. STEIGER. No. We, by the way, would want to put a small caveat on that number. We took the Postal Service's estimate of, I believe, 304,000 nonprofit permit holders. But in collecting our sample, out of the 2,500 mailing organizations that were sampled, we did find some 500 of them did not exist in one way or another. Either they had moved, they were no longer at the Post Office of address, their permit was no longer active, and so it went.

We think this indicates that 304,000 as a measure of active permit holders is probably high—maybe substantially high. We do not doubt that there are that many out there. We just do not think it is that high a proportion using the mail.

Senator STEVENS. But it is really a small portion of that group that is sending advocacy mail, isn't it?

Ms. STEIGER. That is what our report would show, yes, sir. It ranges. Agriculture uses far more of its mailings—or has in this snapshot of time that we took—than does, say, education. And we have that in Table A. But yes, it is 13 percent of the eligible organizations that are using it in total.

Senator STEVENS. Did you have any breakdown as to how much of the advocacy mail was local and how much was national?

Ms. STEIGER. We do not have a distance number.

Senator STEVENS. I take it that in the agricultural section, for instance, there are many local issues on a State or regional basis and that they might well be advocating action on the local level rather than having a national impact. Can we tell how many of these mailings were national mailings as opposed to sectional or regional mailings?

Ms. STEIGER. I think probably the most interesting figure on that is found in Table 1–C and Table 1–B. You will note, for example, that under the column "total nonprofit," only 1 percent of the advocacy mail volume is contained in mailings of up to 1,000 pieces; and only 2 percent in mailings of 1,000 to 5,000; another 2 percent in mailings of 5,000 to 10,000. But then look at the larger volume mailings; 50,000 to 100,000 pieces, 24 percent; 100,000 to 500,000 pieces, 38 percent. We think it is fair to conclude that these are not local mailings. The numbers are very high.

On the other hand, if you look at the number of political advocacy mailings per se on the next chart, 1–C, you will see that some 59 percent of the mailings do show up in the 0–1,000 piece category. This would indicate to us that there are an awful lot of small and possibly more localized mailings, if you will, but certainly small mailings that account for very little volume. The big volume is in the big mailings.

Senator STEVENS. And the large volume is in very few mailers?

Ms. STEIGER. Relatively speaking, yes, although there are many mailers who send small volume. You have to flip the coin.

To return to your question about agriculture, that is on Table 4 and it is a very interesting point that you raise. You look at the total nonprofit on the first column, 20 percent of all the mail volume that is advocacy volume would have to do with Federal issues. But go across to the agricultural column, you will see that 57 percent would be Federal, 40 percent would be State and local. Now, these are not going to add, for the simple reason that there is going to be joint references for both, but it is quite clear that agriculture is interested in a very broad range of issues, and almost as interested in State and local issues as it is in Federal.

This Table, I think, shows the disparate interest of the groups, as well.

Senator STEVENS. Your report—and I take it that you all participated in it—indicates that you believe it would be possible to have a requirement that nonprofit permit holders have a non-subsidized permit and that they mail those mailings that have advocacy matter in them at the full rate. Did you analyze at all whether that concept would increase the cost to the Postal Service?

Ms. STEIGER. In the initial preferred rate study we received superb cooperation from the Postal Service, as I have noted, and worked rather closely with them. In this update of the study, on political advocacy, we already had the data base and we did not consult with the Postal Service on this portion of the study, so we have not received their opinion as to administrative feasibility of looking at the content of a mailing rather than the mailing organizations, which we would recommend be seriously considered.

I think it can be done. I think they do a lot of administration right now that is no more nor no less complex than this. But I would have to defer, since they have not offered an opinion on that.

Senator STEVENS. I will request their comment.

My feeling was, at the time I made the request to you, we are getting to the point now where the cost of this subsidized mail may well jeopardize the availability of that Federal assistance to those who very much need it—the blind, the deaf, some of the very well

known groups, that really are not political fund raising groups, Girl Scouts, Boy Scouts, that sort of organization—and we ought to find a way to differentiate between groups.

If we followed the suggestion that you have made in the report, did you analyze it to see what impact there would be upon these groups that we would normally think of as being eligible for this type of subsidy? Or maybe that question is too general. After all, we might disagree as to what groups would be eligible. But there is a basic core group that no one would disagree on that ought to have Federal assistance.

Ms. STEIGER. Well, I think Table 1 probably does as well for us on that as anything. This gives you a picture of each of the groups, and the quantity of political advocacy they send, and I am presuming—I do not know how to define who it is that is most worthy—but you can see that religious organizations, 17 percent of their mail pieces do have action advocacy; 17 percent, on the other hand, of educational mailings have opinion advocacy.

You can go right down the line and see approximately what use is made. And then we also have the percentage of mailings, which is relatively small, as we mentioned, by groups that would indicate how many of their mailings would be affected by an inability to include political advocacy. So I think you can probably extrapolate the effect.

Senator STEVENS. I do not quite understand that Table 1, the projected number of pieces as 76 for agriculture, for instance. That is a very small amount of the total.

Ms. STEIGER. That is understandable, though, because they account for only 4 percent of total advocacy volume, and they are, relatively speaking, a very small nonprofit class. For example, in the total third-class nonprofit volume, the whole universe, agriculture only accounts for some 10 percent of the volume. So it is a small class in volume, which explains that. As I mentioned, that is what makes this hard when you swing between organizations' percent of advocacy and mailings.

Senator STEVENS. Did you have any evidence of the number of groups that are formed solely for the purpose of obtaining the subsidy?

Ms. STEIGER. We do not, and I should add—I am remiss in not having done so before—We do not even know who the groups are in our sample. We promised anonymity and confidentiality, so we do not even know who is represented in the sample. What we have is aggregate totals by organizations, mailings and volumes. But we could not tell you a specific group that is in it.

Senator STEVENS. There is no way, I take it, to determine when these groups are interlocked, local—Statewide, national groups having separate mailing permits but being of the same organization? That is not possible, either?

Ms. STEIGER. Not from our data here. We do know the identity, probably, of the group from which 35 large mailers were added, but that is not helpful in answering your question, either. We just simply used 35 very large volume mailers.

Senator STEVENS. Well, those 35 largest groups account for a substantial portion of the mailings, don't they?

Ms. STEIGER. Again, I cannot prove that to you from the data. It would be, I think, a fair presumption. But I cannot prove it to you from the data here.

Senator STEVENS. Do you have any indication that there has been a proliferation of these mailers recently? As mailing costs are going up, are there more nonprofit mailings?

Ms. STEIGER. I do not have data on that, and I do not know whether the Postal Service has done a count of any increase in permit holders. I do not have any data on it.

Senator STEVENS. Well, what about the rate of increase in the nonprofit third-class. Has that expanded in recent years?

Ms. STEIGER. Third-class in general has expanded. We can get you the latest volume projections for the class. There has been growth in all third-class volume, nonprofit and general.

Senator STEVENS. Is there any historical study, going back even before the postal reorganization, of the relative growth of nonprofit third-class to third-class in general and to the overall mailing in the country?

Ms. STEIGER. We have not done so, but it probably could be done with just historical data, I would presume.

Senator STEVENS. If it is possible, I would like to see that chart, if it is not going to cost too much money to do it.

Ms. STEIGER. We can do that, and they are all smiling, so I do not think it is going to cost too much money. Do you also want that broken down by pre-sort if we can do it? That may be somewhat significant.

Senator STEVENS. Pre-sort is rather recent, really, isn't it? I guess that would be interesting to see.

Ms. STEIGER. I think the numbers will be more interesting for you if you also see the effect of pre-sort. It will tell you where most of these people are mailing, if we can do that.

Senator STEVENS. Referring to the Chairman's question to you about savings, if we pursued the suggestions in the report, did you make an estimate of the savings that could be involved?

Ms. STEIGER. It is a basic calculation and one that is quite simple to replicate. You presume that you have 21 percent of the nonprofit mail stream, by our finding, that has some sort of political advocacy, either action or opinion. So you take 21 percent of the third-class nonprofit revenue foregone appropriation.

Now, when we first looked at this the only figures that we had were, of course, from fiscal year 1987 and at that point in time the third-class nonprofit revenue foregone appropriation was $457 million. You take 21 percent of that, implicitly that means that $96 million—or nearly $100 million—was going to assist mail with political advocacy content.

Now, we understand the fiscal year 1988 appropriation calls for $402 million to assist third-class nonprofit mail. Twenty-one percent of this would translate into $84 million implicitly assisting mail with political advocacy content.

Senator STEVENS. Well, I still think it ought to be pursued and I intend to pursue it. I will request the Postal Service to give us their comments.

Ms. Tyson or Mr. Crutcher or Mr. Folsom, do you have any comments on this report at all?

Mr. FOLSOM. No, sir.

Senator STEVENS. I appreciate you all coming. The Subcommittee appreciates your coming. Do you have any comments, Mr. Crutcher?

Mr. CRUTCHER. I just think it is great that you are looking at this, Senator Stevens, because it is a matter of public policy that needs to be explored in great detail.

Senator STEVENS. I opposed the concept of the political subsidy, too, but that got shot down, you will recall. We may have to try that again next year, too. I think people are going to be scratching to find places to bring about reductions next year. The reduction of the budget is going to be very difficult.

Ms. Tyson, did you have any comment?

Ms. TYSON. No, except that perhaps by the virtue of the fact that you are looking at this, Senator, we will see a decrease in the amount of political advocacy sent under that permit.

Senator STEVENS. You think that this will cause more advocacy?

Ms. TYSON. No. I think that you may see a decrease in the amount of advocacy once they know you are looking at the practice.

Senator STEVENS. I have also asked the Postal Service to tell me if they have an estimate of the reduction in costs of the third-class nonprofits, if we require that third-class nonprofits be in accordance with the standards for weight and size, that would assure that they all could use the machines and not allow any overweight or oversize subsidized mail.

Ms. STEIGER. Or undersized.

Senator STEVENS. Or undersized, yes. Undersized is the same. It seems to me that if they are going to have a subsidy, then they ought to conform to the area where the taxpayers can handle the mail in the most efficient way and we are going to pursue that, too, and see if that would add to the savings we might bring about in this area.

That would not decrease the number of mailings or the amount of mail, I do not think. I would just have an impact on the kinds of mailings that we are seeing. I think most of the mailings that come into my office are like this.

[Senator Stevens displays sample mailing.]

Senator STEVENS. I just cannot believe this. By the way, by the time they get to Alaska, they are all delivered open. I do not understand that either, but they must give letter carriers fits when they see those things coming.

I do appreciate your time and we will look forward to communicating with you when we get a response from the Postal Service, and I will see if we can pursue this suggestion.

Ms. STEIGER. Mr. Chairman, if I might, I would just like to say a word. A fine staff operates always with anonymity but I think this whole study has been such an incredible contribution, I would like to put on the record the fine efforts of our technical director and assistant technical director, Robert Cohen and Charles McBride, and of our general counsel, David Stover who wrote what I think is a seminal piece here in the appendix on the constitutional questions that issue from the question of subsidy.

We are very proud of our staff and we are proud to be able to present a product that we think is of this high a quality.

Senator STEVENS. Well, it is very good and we have not had any criticism of it yet. So I think that people are analyzing it to see what they are going to do about it, because I do believe this is the direction Congress must go.

Thank you all very much.

Ms. STEIGER. Thank you, Senator.

[Whereupon, at 10:55 a.m., the Subcommittee adjourned subject to the call of the Chair.]

APPENDIX

STATEMENT OF JANET D. STEIGER
CHAIRMAN, POSTAL RATE COMMISSION
BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

October 6, 1987

Mr. Chairman and Senators: It is a pleasure to appear today to discuss the study we made at Senator Stevens's request on use of reduced-rate third-class mail for political advocacy. As the Committee knows, we had assembled a data base for our broader study of preferred-rate mail, mandated by the Omnibus Budget Reconciliation Act of 1985 and completed in June, 1986. Senator Stevens's letter of September 9, 1986, requested a further analysis of these data from the political advocacy point of view. I have attached that letter to my prepared statement.

While today I will be discussing empirical statistics and, to a small extent, some general legal questions, I would make one request. As you know, we have an omnibus rate case before us and must decide it on the basis of our evidentiary record. Therefore we cannot comment on the merits of any question that is or may become an issue in the rate case.

The data base for the 1986 and 1987 studies. By way of background, let me describe how we assembled our data base.

The sample of organizations. So as to have a representative collection of nonprofit mailers, we employed a two-stage probability sampling strategy. Using Postal Service data on third-class mail revenues for every post office in the country, a first stage stratified sample of 50 post offices was drawn. A stratified sampling approach, in which a given post office was more likely to be selected if it had a large mail revenue, was used to increase the efficiency of sampling.

From within the 50 primary-stage sample post offices, a second stage sample of 2,520 nonprofit organizations was selected. These organizations were taken from a Postal Service list of all nonprofit third-class permit holders, which also identified the post office used by the organization. Besides the probability sample of 2,520 mailers, we added 35 very large volume mailers. The sample includes some of each type of eligible organization: religious, educational, scientific, and so on. These types, by the way, are defined in the Postal Service's Domestic Mail Manual, in the pages I have attached to my statement.

The sample of mail pieces. Each mailer in the sample was asked for a piece from each mailing sent at the nonprofit bulk third-class rate between March 16, 1985 and March 14, 1986, together with a copy of the associated mailing statement -- Postal Service Form 3602. We needed these forms to determine the volume for each mailing in the study.

Fifty-one percent of our list of organizations responded. The sample comprises 18,515 mailings accounting in total for 980 million mail pieces. All nine categories of eligible organizations were represented, but the response rate from qualifying political party committees was too low to be of use for our report on political advocacy mail: only five responded out of 100 contacted. These organizations are the national and state political committees and Congressional campaign committees made eligible for nonprofit rates in 1978, by Public Law 95-593.

Analyzing the mail piece sample. As is customary in the survey profession, we -- as the client -- had an intermediary analyze the sample mail pieces to preserve anonymity and confidentiality of the participants. In the present study as well as the June 1986 effort, this work was done by an experienced survey research organization.

Third-class mail is highly diverse, so a good deal of categorizing clearly had to be done before any useful conclusions could be drawn. Accordingly, with the help of a consultant, we drew up a coding sheet for the data analysts to use in examining the mail pieces themselves.

In practice, a "coder" would examine each mail piece and answer all the items on the coding sheet. These answers, in the aggregate, underpin the statistical tables in the study and hence the empirical conclusions we were able to draw. The process reflects some important definitions we adopted for purposes of the study.

To begin with, not all political advocacy is of the same type. Our first-level division was into "action advocacy" and "opinion advocacy". Action advocacy tries to bring about some action by the recipient to support the sender's political position: writing to a Congressman, sending a contribution, marching in a demonstration, and so on. Opinion advocacy tries to influence the recipient's beliefs in a direction consistent with the sender's political position, without asking for any particular action.

Because of a historical and legal distinction among forms of political action, we further subdivided the action advocacy category. Some forms of political action are addressed to governmental decisionmakers, directly or indirectly. Writing to a Senator or Representative -- whether in one's own words, or simply by sending a preprinted coupon or postcard supplied by the advocacy organization -- is one example. Urging participation in a telephone campaign or a demonstration at the Capitol or State House is another. This general category is sometimes referred to as "lobbying" -- using that word, obviously, in a very broad sense -- in contrast to other forms of political action, such as attending a rally not directed at influencing a government body, or sending money to a cause.

In summary, therefore, we divided appeals to opinion and belief from calls to action, and subdivided the latter into contacting -- in person, by letter, by telephone -- fundraising, voting, and generalized support. This let us estimate what political advocacy mailers want to achieve by their mailings.

Another important analytical dimension is the type of issue involved. You can find a political aspect to almost anything, so categorizations cannot be too rigid; but we settled on four broad areas:

Environmental issues, including conservation, occupational health, nuclear power, etc.

Economic issues, such as welfare, unionization, migrant labor, employment discrimination, import curbs, the budget, and subsidies.

Noneconomic social issues like educational quality, school prayer, gun control, the Equal Rights Amendment, or abortion questions.

All other issues, which would encompass, for example, defense and foreign policy questions.

Data organized this way help us see where the mailing groups hoped to make a difference.

A third dimension was pre-established for us by the existing postal law: the eight traditional categories of eligible nonprofit organization, plus political party committees. The "Big Eight" are religious, educational, scientific, philanthropic, agricultural, labor, veterans', and fraternal bodies. As I noted, we did not get from the political party committees enough response to be statistically usable for a study of political advocacy. (We did not have this problem in the broader study of advertising, since the extent of participation by the com .ttees would make little difference on that issue.)

Even if we had had a statistically usable response, I suspect we would have treated the party committees separately in this study: their relationship to political advocacy is obviously different from that of a scientific or philanthropic organization, and their entitlement to the nonprofit rate has different historical roots.

Thus the qualitative parameters were:

-- who the mailers are,
-- what problems they are interested in, and
-- what they want those they address to do about them.

Obviously we used quantitative measures as well. In particular, we organized the data to show four:

-- percent of mail pieces,
-- percent of mailings,
-- percent of nonprofit organizations, and
-- percent of references.

A "reference" is an individual item of political advocacy -- perhaps one of several within a mail piece. An envelope containing both a letter arguing against construction of more nuclear plants and a flyer urging the recipient to join a "March on Washington" protesting world hunger, would be one mail piece, but would contribute two references. "Percent of nonprofit organizations" refers to the proportion of eligible bodies that send the particular subtype of mail in question. For instance, Table 3 shows that 13 percent of all nonprofits sent political advocacy mail of some kind. Thirty-three percent of agricultural, but only six percent of scientific, nonprofits sent action advocacy. Finally, counting "mailings" as well as absolute volume of mail pieces gives us some idea of how political advocacy mail is distributed. Summary Table A, for example, shows that while 60 percent of the pieces sent by agricultural organizations contain advocacy, only 23 percent of their mailings do. This suggests that, for these entities,

political advocacy tends to be concentrated in a relatively restricted number of large mailings. The same table indicates that labor organizations' political advocacy tends to be more evenly distributed: it is found in 23 percent of the mailings and 24 percent of the pieces.

Three general conclusions seem to emerge with special prominence from the statistics.

First, political advocacy is a major use of the nonprofit third-class category. Twenty-one percent of all nonprofit third class pieces contain political advocacy of one kind or another.

Second, a fairly significant proportion of eligible nonprofit organizations take advantage of the reduced rate for political advocacy. As noted, we found 13 percent of the organizations in our sample had used it for this purpose.

Third, political advocacy seems to be correlated with large mailings. The 13 percent of eligibles who send political advocacy -- and the 21 percent of gross volume that contains advocacy -- account for only seven percent of the separate mailings.

Obviously, with eight major types of nonprofit organization represented in the study, there will be differences of detail in usage. You can get an overview of these from Summary Table A; and Summary Table B gives a breakdown by issues addressed.

Action advocacy references occurred in about 12 percent of the mail pieces, and opinion references in another 12 percent. Some had both, which is why 12 and 12, in this case, add up to 21. Table 7 reflects the subdivision of action advocacy into types of action sought by the mailer; it indicates that 23 percent of action-advocacy pieces asked the recipient to send a prepared form or card; 23 percent called for an original letter;

eight percent requested a call or telegram; and one percent suggested participation in a demonstration at a governmental site. (These are references, so, again, the same mail piece could contain more than one kind of invitation.) Table 8 distributes these forms of advocacy across selected types of political issues. It seems clear that arousing interest in directly approaching government with petitions, complaints, or expressions of support is a not insignificant use of the nonprofit rate.

I realize it will be little, if any, relief to move from statistical technicalities to legal ones, but the quantitative significance of political advocacy prompts a word or two on the subject. The legal appendix to our study points to some constitutional questions that should be considered in drafting any restriction on political expression through nonprofit mail. It emerged in the course of research that lobbying has been traditionally regulated more than political speech in general -- by both rules governing direct approaches to Congress and the restrictions the Internal Revenue Code puts on nonprofit tax exemptions for organizations that lobby. Incidentally, the tax code's definition -- with which nearly every executive in the nonprofit sector must have some familiarity -- would encompass much of the grass roots activity we find in the mail we studied.

Related to this is the constitutional principle that burdens on protected speech should be no broader than necessary. If restrictions are contemplated on political expression in subsidized preferred rate mail, we would urge that they affect specific mailings containing the defined type of advocacy -- and not the overall eligibility of the organization for subsidized rates. This focus may well require both a degree of self-policing by mailers and somewhat more enforcement by the Postal Service. But the way to end the subsidy for political advocacy, or some portion of it, is to charge regular, nonsubsidized rates

for the mail containing it -- in other words, target the advocacy not the advocate. "Punishing" the mailer by revoking its eligibility to mail anything at the nonprofit rate looks dangerously like penalizing political speech.

Mr. Chairman, that concludes my prepared remarks. We will be happy to try to answer any questions.

WILLIAM V ROTH, JR. DELAWARE CHAIRMAN
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ALBERT GORE JR. TENNESSEE
FRANKLIN G POLK, CHIEF COUNSEL AND STAFF DIRECTOR
MARGARET P CRENSHAW MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON
CIVIL SERVICE POST OFFICE, AND
GENERAL SERVICES

WASHINGTON, DC 20510

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CARL LEVIN MICHIGAN
WAYNE A SCHLEY STAFF DIRECTOR

ATTACHMENT 1

POSTAL RATE COMMISSION
SEP 10 1986
Office of Commissioner
Steiger

September 9, 1986

The Honorable Janet D. Steiger
Chairman
Postal Rate Commission
1333 H Street, N.W., Suite 300
Washington, D.C. 20268-0001

Dear Janet:

Thank you for your recent kind note. It's a pleasure to be able to work with someone who has done such a tremendous job at the Rate Commission. Your continuation as Chairman will be of great benefit to all postal consumers.

You may recall that during our joint hearing on the Commission's nonprofit mail study one of the issues discussed was the increase in advocacy mail. Because we did not include advocacy mail in the specific instructions to the Commission, no one was, nor could be expected to be, able to shed a great deal of light on the kinds and volume of such mail. By advocacy mail I do not mean just political advocacy mail for often one-issue mailings may appear to be non- or bi-partisan and yet they often have political ramifications.

The whole question of advocacy mail has been troubling to me, especially since the proliferation of one-issue mailings. Therefore, as Chairman of the Senate Civil Service, Post Office, and General Services Subcommittee, I am requesting that the Postal Rate Commission make use of the large random sampling of third class mail you undoubtedly already have to estimate the types and quantities of advocacy mail, including political mail, currently enjoying subsidized rates. It is my hope that sufficient relevant materials are available that would keep the cost of such a study at a minimum.

In addition to the cost information, I would appreciate any suggestions that you may have in terms of legislative language that will allow us to realize savings for the

taxpayers by eliminating or limiting the use of subsidized rates by the various advocacy groups.

Should you or your staff have any questions, please feel free to contact me or the Subcommittee staff director, Wayne Schley, at 224-2254.

With best wishes,

Cordially,

TED STEVENS
Chairman

ATTACHMENT 2

b. Residual. Residual pieces (those not part of a group of 10 or more pieces to a particular five-digit ZIP Code) may be included in a five-digit Presort level rate mailing, subject to the following provisions:

(1) Residual pieces do not count toward the minimum quantity requirements for the five-digit Presort-level rate.

(2) Residual pieces are not eligible for the five-digit Presort level rate and must have postage paid at the appropriate third-class "basic" level bulk rate.

(3) Residual pieces must be prepared in accordance with the applicable provisions of 667.12 and 667.13.

c. Listing Required

(1) When a third-class five-digit Presort level rate mailing consists of pieces to be mailed at the basic rate, the mailer is required to provide the post office with a list of the number of qualifying pieces to each ZIP Code destination, except as noted in 622.12*c(2)*.

(2) A list of the number of qualifying pieces being mailed to each ZIP Code destination is not required when all sacks containing identical weight third-class five-digit Presort level rate pieces are physically separated at the time of mailing from all sacks containing identical weight pieces to be mailed at the basic rate.

.13 Basic Presort Level. Mailings of at least 200 pieces or 50 pounds, presorted in accordance with 667 (except for the requirements in 667.3 for the carrier route Presort level rate, which is optional) are eligible for the third-class bulk basic Presort-level rates.

.14 Processing Category. Irregular and machinable mail may be commingled in five-digit and optional city sacks. All other pieces in a bulk-rate mailing must be of the same characteristic type as defined in 128 (i.e., letter-size, flats, machinable parcels, or irregular parcels).

622.2 Postage. Postage is computed at the applicable rates on the entire bulk mailing to be mailed at one time.

Exception: In no case shall less than the applicable minimum per-piece charge be paid. (See 611.3.)

622.3 Merging and Presorting

.31 Mailers should merge and presort all third-class matter:

a. Presented for mailing at the same time, and

b. When the pieces are identical as to size and weight.

.32 Differences in text, use or nonuse of adhesive address labels, and the use of several address lists with differing key numbers do not prohibit the mailer from merging and presorting mailings.

622.4 Services Not Available. Registry, insurance, special delivery, special handling, certified, and COD services may not be used for third-class matter mailed at bulk rates.

623 Special Bulk Rates

623.1 Authorization. Only organizations which meet the requirements of 623.2 or 623.3 and which have received specific authorization from the Postal Service may mail eligible matter at the special bulk rates contained in Exhibit 611.2. (See application procedure in 642.) Before mailing at the special bulk rates, a mailer must be issued a special-rate authorization. A separate authorization is required at each post office where special-rate mailings are deposited.

623.2 Qualified Nonprofit Organizations

.21 General. The following organizations may be authorized to mail at the special bulk rates, if they are not organized for profit and none of their net income inures to the benefit of any private stockholder or individual:

a. Religious
b. Educational
c. Scientific
d. Philanthropic
e. Agricultural
f. Labor
g. Veterans'
h. Fraternal

.22 Primary Purpose. The standard of "primary purpose" used in the definitions of qualified nonprofit organizations in 623.23 requires that the organization be both organized and operated for the primary purpose. Organizations which "incidentally" engage in qualifying activities do not meet the primary-purpose test.

.23 Definitions of Eligible Nonprofit Organizations

.231 Religious. A nonprofit organization whose primary purpose is one of the following:

a. To conduct religious worship (for example, churches, synagogues, temples, or mosques).

b. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship.

c. To further the teaching of particular religious faiths or tenets, including religious instruction and the dissemination of religious information.

.232 Educational. A nonprofit organization whose primary purpose is the instruction or training of individuals for the purpose of improving or developing their capabilities or the instruction of the public on subjects beneficial to the community.

a. An organization may be educational even though it advocates a particular position or viewpoint, as long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. Conversely, an organization is not considered educational if its principal function is the mere presentation of unsupported opinion.

b. Examples of educational organizations are:

(1) An organization (such as a primary or secondary school, a college, or a professional or trade school) which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where educational activities are regularly carried on.

(2) Any organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or similar programs. Such programs may be on radio or television.

(3) Any organization which presents a course of instruction by means of correspondence or through the use of television or radio.

(4) Museums, zoos, planetariums, symphony orchestras, and similar organizations.

.233 Scientific. A nonprofit organization whose primary purpose is one of the following:

a. To conduct research in the applied, pure, or natural sciences.

b. To disseminate technical information dealing with the applied, pure, or natural sciences.

.234 Philanthropic (Charitable). A nonprofit organization organized and operated for purposes beneficial to the public.

a. Examples of philanthropic organizations include those which are organized to:

(1) Relieve the poor and distressed or the underprivileged.

(2) Advance religion.

(3) Advance education or science.

(4) Erect or maintain public buildings, monuments, or works.

(5) Lessen the burdens of Government.

(6) Promote social welfare for any of the above purposes or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency.

b. The fact that an organization which is organized and operated to relieve indigent persons may receive voluntary contributions from those persons does not necessarily make it ineligible for special bulk rates as a philanthropic organization. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents ideas on controversial issues to influence public opinion and sentiment towards an acceptance of its views, does not necessarily make it ineligible for special bulk rates as a philanthropic organization.

.235 Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture.

a. The organization may further and advance agricultural interests through:

(1) Educational activities.

(2) Holding agricultural fairs.

(3) Collecting and disseminating information concerning cultivation of the soil and its fruits or the harvesting of marine resources.

(4) Rearing, feeding, and managing livestock, poultry, bees, etc..

(5) Other activities related to agricultural interests.

b. The term "agricultural" also includes any nonprofit organization whose primary purpose is collecting and disseminating information or materials related to agricultural pursuits.

.236 Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers.

a. Labor organizations include, but are not limited to, organizations in which employees or workers participate whose primary purpose is to deal with

employers concerning grievances, labor disputes, wages, hours of employment, working conditions, etc.

b. Labor unions and employee associations are examples of organizations formed for these purposes.

.237 Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

.238 Fraternal. A nonprofit organization which meets *all* of the following criteria:

a. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

b. Is organized under a lodge or chapter system with a representative form of government;

c. Follows a ritualistic format; and

d. Is comprised of members who are elected to membership by vote of the members.

Note: Fraternal organizations include such organizations as the Masons, Knights of Columbus, Elks, and college fraternities and sororities, and may include members of either or both sexes. Fraternal organizations do not encompass such organizations as business leagues, professional associations, civic associations, or social clubs.

623.3 Qualified Political Committees

.31 General. The following political committees may be authorized to mail at the special bulk rates without regard to their nonprofit status:

a. A national committee of a political party.

b. A state committee of a political party.

c. The Republican Senatorial Campaign Committee.

d. The Democratic Senatorial Campaign Committee.

e. The Democratic National Congressional Committee.

f. The National Republican Congressional Committee.

.32 Definitions of Qualified Political Committees

a. National Committee. The organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operations of such political party at the national level.

b. State Committee. The organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the state level.

623.4 Ineligible Organizations. The following and similar organizations do not qualify for the special bulk rates, even though they may be organized on a nonprofit basis: automobile clubs; business leagues; chambers of commerce; citizens' and civic improvement associations; individuals; mutual insurance associations; political organizations (other than those specified in 623.3); service clubs such as Civitan, Kiwanis, Lions, Optimist, and Rotary; social and hobby clubs; associations of rural electric cooperatives; and trade associations. In general, state, county, and municipal governments are not eligible for the special bulk rates. However, a separate and distinct state, county, or municipal governmental organization which meets the criteria for any one of the specific categories in 623.2 may be eligible, notwithstanding its governmental status. For example, school districts and public libraries may be eligible under 623.232 (educational). Nevertheless, governmental organizations will normally not be eligible under 623.234 (philanthropic), since their income is generally not derived primarily from voluntary contributions or donations.

623.5 What May be Mailed

.51 An organization authorized to mail at the special bulk rates may mail *only* its own matter at those rates. An organization may not delegate or lend the use of its permit to mail at the special bulk rates to any other person or organization.

.52 Cooperative mailings may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings involving the mailing of any matter in behalf of or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. If customers disagree with a postmaster's decision that the regular rate of postage applies to a particular mailing, they may appeal the decision in accordance with 133. (See Form 3602, *Statement of Mailing With Permit Imprints*, or Form 3602-PC, *Statement of Mailing--Bulk Rates*, for the certifications required of special bulk-rate mailers for mailings made under this section.)

623.6 Identification. All matter mailed at the special bulk rates must identify the authorized permit holder. The name and return address of the authorized permit holder must appear either on the outside of the mailpiece or in a prominent location on the material being mailed. Pseudonyms or bogus names of persons or organizations may not be used. If the mailpiece bears any name and return address, it must be that of the authorized permit holder. A well-recognized alternative designation or abbreviation such as "The March

79-319 O - 88 - 2

QUESTIONS FROM CHAIRMAN PRYOR

1. Now I do not mean to be critical of the Commission. You have done what appears to be an excellent job in collecting mailstream information on just who mails how much nonprofit mail. As I understand it, all of these nonprofit mailers use permits for mailing and for billing purposes. Why didn't you go to the Postal Service for the basic volume data -- isn't this type of mailstream information available from the Postal Service for nonprofit and other large volume and bulk mailers who use these permits?

1. There are two reasons why Postal Service data would not have yielded all the information needed for our studies, or at least would not have done so readily.

First, both the study we were assigned by the 1985 Omnibus Budget Reconciliation Act and the study discussed at these hearings depended on knowing and classifying the content of nonprofit third-class bulk mail. In the first study, we were evaluating quasicommercial advertising content; in the second, various kinds of political advocacy. Nonprofit permits are issued to organizations of specific kinds but not for specific types of mail content. Thus, for instance, a university may use its permit to send both announcements of lectures or courses and a catalog of Christmas gifts from the campus store. The Postal Service records only number of pieces, weight, postage, and so on, for the entire subclass of nonprofit third class. Thus, its records would not enable us to break down the volume among the various types of nonprofit permitholders. Moreover, its record would not distinguish between a mailing of course announcements and a mailing of Christmas catalogs. Without such content information, however, neither study would have been feasible. It could be obtained only by review of the mail pieces themselves -- the task performed by coders under the supervision of our survey contractor.

Second, third-class permits are issued, and detailed third-class mailing records are kept, at local post offices. A nonprofit organization receives a permit to mail at preferred third-class rates at a particular office; to use more than one

post office, it must have additional permits. As information filters up to USPS headquarters, mailing-by-mailing detail becomes submerged as the data are aggregated. On the other hand, the Service has not performed a unified and comprehensive study of its mailstream and the uses made of it since the mid-1970s (the Household and Non-Household Mail Stream Studies). Of course, an up-to-date version of such studies would be highly useful, but it was not available.

Obtaining the needed data from the mailers, as our consultants did, was more efficient than seeking it from the individual post offices concerned. The latter approach was considered and then rejected during the planning phase of the initial study.

2. According to the report, education, philanthropic and religious organizations account for 84 percent of the nonprofit mail and 85 percent of the mail containing a political message. Can you provide some insight into the range of groups that fall into each of those categories?

2. The best source of this insight is the Domestic Mail Manual, which gives guidance to Postal employees on who may or may not receive a permit in each of these three categories.

It is fair to say that "educational" and "philanthropic" are extremely broad categories. "Religious" is relatively tightly defined; these organizations must have as their purpose:

a. To conduct religious worship (for example, churches, synagogues, temples, or mosques).
b. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship.
c. To further the teaching of particular religious faiths or tenets, including religious instruction and the dissemination of religious information.

DMM § 623.231. The definition of "philanthropic" (§ 623.234) has as its general principle that a "[p]hilanthropic ([c]haritable)" organization is one "organized and operated for purposes beneficial to the public." The regulation then gives examples: relief of the poor, advancement of religion, education or science; erecting or maintaining public works or monuments; "lessen[ing] the burdens of government"; and

> Promot[ing] social welfare for any of the above purposes or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency.

Under § 623.234(b), advocacy of social or civic change or presentation of "ideas on controversial issues to influence public opinion and sentiment towards and acceptance of its views" does not make an organization ineligible for this category.

The problems suggested by the definition of "educational" (DMM § 623.232) are discussed in the Commission's 1986 Report to the Congress: Preferred Rate Study, at pp. 51-56. Eligibility is not confined to organizations that would be immediately recognized as schools or colleges; it extends to

> . . . [an] organizaiton whose primary purpose is the instruction or training of individuals for the purpose of improving or developing their capabilities or the instruction of the public on subjects beneficial to the community.

As the Commission noted in the 1986 study (p. 51-52),

> . . . the definition of "educational" nonprofits is so broad that many groups now may use preferred rate categories in ways that might not have been intended by Congress. For example, opinion-making entities, widely-distributed publications containing a large volume of advertising, and seminars offered for high fees all have been able to qualify for subsidized rates under the present definition of "educational" . . . .

In addition to including organizations that distribute information to the community at large, rather than just to those who have in some sense become their students in a traditional teaching relationship, the rule also embraces nonprofits that promote a distinct point of view. The rule states that

> An organization may be educational even though it advocates a particular position or viewpoint, as long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. Conversely, an organization is not considered educational if its principal function is the mere presentation of unsupported opinion.

Some difficulties besetting an administrative attempt to distinguish between fair advocacy and "mere propaganda" are discussed at pp. 52-54 of the 1986 report.

In summary, it is fair to say that the religious category is the most clearly defined of the three mentioned. The philanthropic category is very broad, largely because the possible range of philanthropic or charitable activities is likewise broad. Finally, the educational category is extremely broad not only because of the wide range of subjects on which training or instruction can be given but also because the definition includes much more than the traditional student-teacher relationship, and permits many organizations advocating one point of view to enjoy eligibility on the same basis as those that teach in a neutral fashion.

3. Of all those you surveyed, "qualifying political organizations" had the lowest response rate -- only 5 of 100 groups responded. Is information on these groups available from either the Postal Service or the Federal Elections Commission (FEC)? (Why not?)

3. At least under present methods, it is probably not practical for the Postal Service to extract volume and revenue information for the various permit-holding political party committees.

The Federal Election Commission does require reporting of disbursements -- in Federal election campaigns -- by committees subject to its jurisdiction. An inquiry to FEC headquarters elicited the information that while committees are required to report the nature of an expenditure over $200, they need not indicate separately the cost of postage and the other costs of mailing (envelopes and the like). Occasionally, committees voluntarily show postage separately; but they do not break it down by class of mail. Hence, even in those cases, information on their use of nonprofit third class bulk, vis-a-vis other classes of mail, would not be reported to the FEC.

4. Your survey was conducted with respect to mailings between March 1985 and March 1986. No national elections took place during that time. Do you have any sense as to whether the amount of political mail would have been greater, the percentage higher, in an election year?

4. It is to be expected that there would be more political mail during an election year, though it is impossible to guess how much more. The size of the effect would depend, among other things, on whether issues in which nonprofit groups (other than qualifying political party committees) were interested were also involved in the election. For instance, if debate in a state's Senatorial election centered on the candidates' positions on abortion rights, we might expect advocacy mail from a variety of religious, philanthropic, and other nonprofits as well as from the explicitly partisan committees. Such mail would not have to promote or denounce a named candidate; the simple fact that the election raised the general policy issue could elicit advocacy mail.

QUESTIONS FROM SENATOR SASSER

1. Mrs. Steiger, for the record, who was the contractor who performed the Political Advocacy Mail Study? Does the Postal Rate Commission plan to send to the Congress legislation that would have the effect of limiting "preferred" rates for nonprofit organizations that send our advocacy mail? Has the Reagan Administration urged you to transmit such legislation to Congress or have they drafted legislation for the Postal Rate Commission to that effect?

1. Our contractor for the Political Advocacy Study was Ted Dunn Research Associates, Inc. (formerly Dunn and David, Inc.) of New York, New York, which is the same contractor the Commission employed to conduct the Preferred Rate Study of June, 1986, which was required by the Budget Reconciliation Act of 1985. Since the data base collected in the Preferred Rate Mail Study was used for the Political Advocacy Study, employing the contractor which collected and held the data base was the most efficient course of action.

The Commission does not plan to submit legislation concerning political advocacy in nonprofit bulk third-class mail. Our report contains an analysis of the data collected for the period March 1985 to March 1986 and, as an appendix, a discussion of Constitutional issues to consider if the use of nonprofit subsidized bulk third-class rates for political advocacy is to be regulated. Responding to a Congressional staff request for assistance in connection with the budget reconciliation process, we are preparing an example of legislation concerning political advocacy mail.

Our study was conducted at the request of Senator Stevens in September 1986, as the Chairman of the Subcommittee on Civil Service, Post Office and General Services of the Senate Government Affairs Committee. That request, as I noted above, was an outgrowth of the Preferred Rate Study which the Commission conducted pursuant to the Budget Reconciliation Act of 1985. The Administration did not contact us concerning our response to Senator Stevens' request or any proposed legislation or draft legislation to limit the use of preferred rate mail for political advocacy.

2. You state that the best way of curbing Political Advocacy Mail is by "targeting" the advocate piece and denying a preferred rate to that piece of mailing. Is there currently a statutory basis whereby this could be accomplished? Could current postal regulations be used to achieve this end? Who would review and police mail to be "targeted" for a loss of such a subsidy? How much postal manpower would have to be used to monitor and review advocacy mail and deny preferred rates for Political Advocacy Mail? Would such a program require reallocation of scarce Postal resources from other areas such as the traditional duties of the Postal Inspection Service to root out fraudulent use of the U.S. Mails?

2. Neither the Postal Service nor the Postal Rate Commission have statutory authority to adjust (by either expansion or contraction) the eligibility for subsidized postal rates. Since nonprofit bulk third-class is a preferred rate category which benefits from revenue forgone appropriations, we cannot alter the eligibility for nonprofit bulk third-class rates without statutory change. Similarly, the Postal Service by regulation cannot change eligibility without "new" statutory authorization.

If restrictions on the use of nonprofit bulk third-class mail for political advocacy are enacted, actions of both the mailer through self-policing and the Postal Service through somewhat grater enforcement will be needed to make the restrictions successful. Mailers would submit a copy of the mail piece, as they do today, and would indicate whether or not the piece contained "restricted" political advocacy. If the piece did, regular, non-subsidized, bulk third-class rates would apply. If the mailer claimed that the piece did not contain "restricted" advocacy, nonprofit, subsidized, bulk third-class rates would apply. Postal Employees could make random, sample inspections of pieces specified as not containing advocacy at a later date or immediately upon acceptance of the mail. Thus, each mailer would have two bulk third-class permits -- one for nonprofit rates, and one for regular rates to use with political advocacy mail

We have not asked the Postal Service about the administrative procedures to enforce any restrictions on political advocacy mail. However, any procedures would likely dove-tail with the procedures to be used if commercial use of the nonprofit third-class mail is restricted which the Commission studies in 1986 pursuant to the Budget Reconciliation Act of 1985. Postmaster General Casey in 1986 responded to the administrative practicability of restricting commercial use of nonprofit mailing privileges for the Commission's Report to the Congress on Preferred Rate Mail. A copy of that letter was included in Appendix G, Part Two of that report and is attached to these responses.

3. Describe in your own terms some of the pieces of political advocacy reviewed in your study. If preferred rates were denied to Political Advocacy Mail, would this have a chilling effect on the operations of various types of nonprofit organizations, most especially religious and charitable organizations?

3. When the Commission collected the data base for the June, 1986 Report to the Congress on Preferred Rate Mail, the nonprofit participants were promised confidentiality and anonymity. Only the Commission's contractor was permitted to review the sample pieces of mail submitted by the nonprofit organization. That same data base was used in the Political Advocacy Study, and the same conditions applied. The Commission did not review pieces of mail for this study and, therefore, cannot describe any mail pieces included in the data base.

The term "chilling effect" most often is used as a term of art when discussing restrictions on First Amendment rights. As the Legal Appendix to the Political Advocacy Study indicates, removing speech from eligibility for a taxpayer subsidy -- and not otherwise preventing or curbing speech -- does not necessarily have a chilling effect on speech. Of course, the lines between permissible and impermissible restrictions on speech are not always clear cut. Any restrictions on the use of subsidized, nonprofit mail for political advocacy must be carefully constructed and narrowly drawn.

APPENDIX G
Part Two

THE POSTMASTER GENERAL
Washington DC 20260-0010

April 18, 1986

Dear Mr. Clapp:

This responds to your letter of March 25, 1986, requesting our views on the administrative practicability of restricting the commercial or promotional use of nonprofit mailing privileges.

The primary concern of the Postal Service is that any new legislation restricting the use of nonprofit mailing privileges should clearly state Congressional intent, with no exceptions or loopholes. Any restrictions on the content of nonprofit mailings must be unmistakable, so that an acceptance clerk can determine the correct postage by simply looking at a sample mailing piece. Clearly stated restrictions will also benefit mailers, who will understand what type of content will cause a mailing to be charged a higher rate, and will find it easier to comply with a clear rule than a fuzzy one. We emphasize that any restrictions on the content of nonprofit mailings must be objective and not depend upon the purpose or intent of either the mailer or the mailing piece. Experience indicates that classification standards which hinge upon the motives of a publisher or other mailer are next to impossible to enforce.

We believe that section 15103(b)(1) of the 1985 Budget Reconciliation Act offers a promising standard for identifying mail which is not eligible to be mailed at the third-class nonprofit rates. An acceptance clerk could readily identify a mailing which "advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements." We expect that this wording would be supplemented by a full legislative history to discourage attempts to disguise advertising as something else.

We warn, however, that writing exceptions into the suggested language would compromise its effectiveness. Attempts to stop the abuse of even a narrow exception could require extended administrative and court proceedings, and even the successful termination of an abuse would not necessarily enable us to recover the subsidy paid on an organization's mailings.

We do not agree with the Third Class Mail Association that the tax code's concept of unrelated business income should be grafted onto postal regulations. Acceptance clerks do not have the time or resources to inquire into the "primary purpose" of a nonprofit organization at the loading dock. To guard against improper mailings, clerks check whether a sample envelope appears on its face to contain the nonprofit organization's own mail and not that of some other company or organization. This inspection is an objective test which can be performed quickly in busy surroundings.

It is an understatement that acceptance clerks would "need some training" to determine whether a particular mailing was substantially related or unrelated to an organization's primary purpose. The body of tax law concerning unrelated business income is anything but clear and consistent, and mail acceptance personnel must often deal with sophisticated customers (and their lawyers) who know how to use the rules. Piling complex tax law principles on top of the third-class mailing regulations would merely create administrative confusion. These problems would be compounded if the unrelated business income concept were applied to advertising in nonprofit second-class publications. In such a case, acceptance clerks might be required to examine each separate advertisement in an issue of a publication to determine whether it was substantially related to an organization's primary purpose.

Thank you for this opportunity to comment. We look forward to working with you on other aspects of your continuing study.

Sincerely,

Albert V. Casey

Mr. Charles L. Clapp
Secretary
Postal Rate Commission
Washington, D.C. 20268-0001

POSTAL RATE COMMISSION
Washington, D.C. 20268-0001

OFFICE OF THE CHAIRMAN

October 14, 1987

The Honorable
Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

We have compiled a response to your request for volume growth of nonprofit and regular bulk third-class mail and their corresponding presort levels. I have enclosed in both chart and graphic format the volume growth of nonprofit bulk third-class and a comparison to regular rate from 1970 to 1986. The presort level comparisons begin in 1979, the year in which presort discounts originated.

I hope that this information fully responds to your request. Please let me know if we can be of further assistance to you or your fine staff.

Sincerely,

Enclosures

THIRD-CLASS PRESORT MAIL VOLUME
BULK RATE
(millions of pieces)

Fiscal Year	Regular Bulk Rate				Nonprofit Bulk Rate			
	Total	Required	Five Digit	Carrier Route	Total	Required	Five Digit	Carrier Route
1979	19,742	16,810	-	2,932 1/	7,303	7,303	-	-
1980	21,997	14,979	-	7,018	7,964	7,875	-	89 2/
1981	24,706	11,636	2,528 3/	10,542	8,566	7,775	434 3/	357
1982	27,452	8,791	4,919	13,742	9,064	6,169	1,768	1,127
1983	31,186	8,813	5,675	16,698	9,381	5,950	2,099	1,332
1984	37,699	9,559	6,748	21,392	10,372	6,215	2,529	1,628
1985	41,026	10,429	7,190	23,407	10,976	6,314	2,724	1,938
1986	44,006	11,629	8,203	24,174	10,888	5,936	2,811	2,141

1/ Separate carrier route presorted rate was established for regular bulk January 28, 1979.
2/ Separate carrier route presorted rate was established for nonprofit bulk April 23, 1980.
3/ Five-digit presorted rate established March 22, 1981.

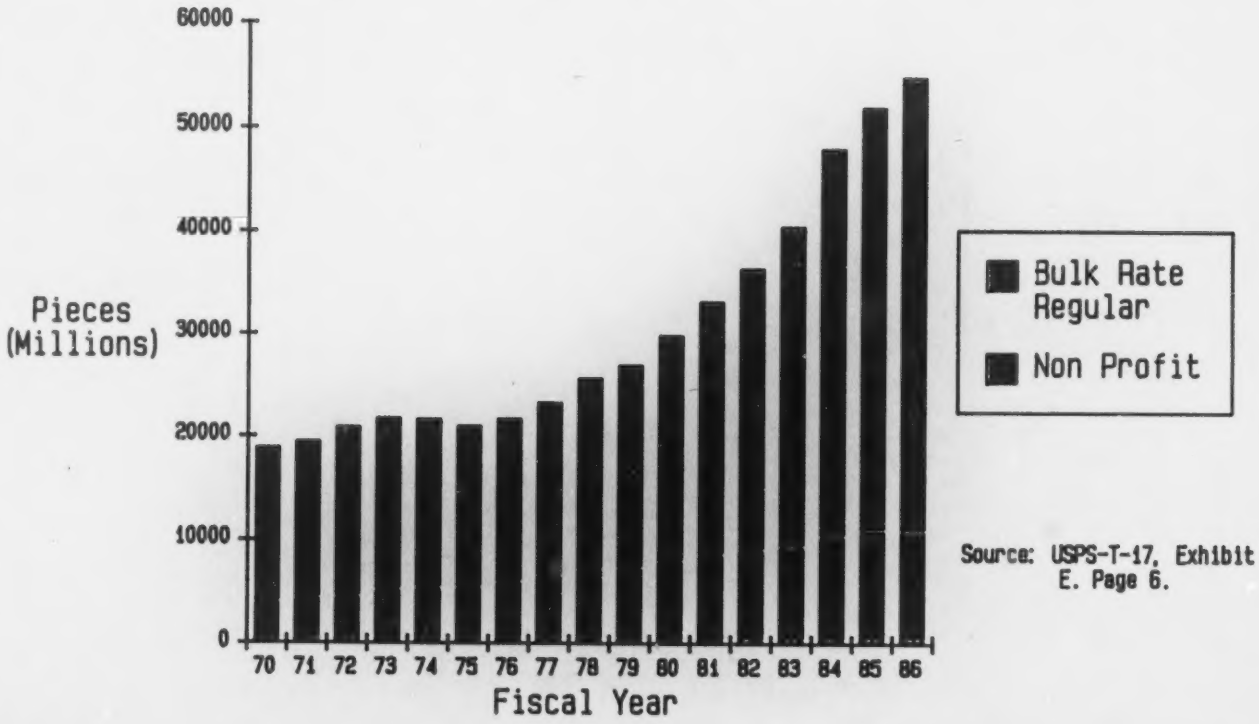
Source: USPS-T-17
Exhibit E, Page 7.

THIRD CLASS MAIL VOLUME. 1970 - 1986.

Fiscal year	Non Profit	% Increase From Previous Year	Bulk Rate Regular	% Increase From Previous Year	Total Third Class Bulk	% Increase From Previous Year
1970	3,971		15,051		19,022	
1971	4,376	10.20%	15,249	1.32%	19,625	3.17%
1972	4,508	3.02%	16,504	8.23%	21,012	7.07%
1973	5,181	14.93%	16,710	1.25%	21,891	4.18%
1974	5,358	3.42%	16,436	-1.64%	21,794	-0.44%
1975	5,438	1.49%	15,684	-4.58%	21,122	-3.08%
1976	5,967	9.73%	15,862	1.13%	21,829	3.35%
1977	6,573	10.16%	16,852	6.24%	23,425	7.31%
1978	7,189	9.37%	18,575	10.22%	25,764	9.99%
1979	7,303	1.59%	19,742	6.28%	27,045	4.97%
1980	7,964	9.05%	21,997	11.42%	29,961	10.78%
1981	8,566	7.56%	24,706	12.32%	33,272	11.05%
1982	9,064	5.81%	27,452	11.11%	36,516	9.75%
1983	9,381	3.50%	31,186	13.60%	40,567	11.09%
1984	10,372	10.56%	37,699	20.88%	48,070	18.50%
1985	10,976	5.82%	41,026	8.83%	52,002	8.18%
1986	10,888	-0.80%	44,006	7.26%	54,894	5.56%

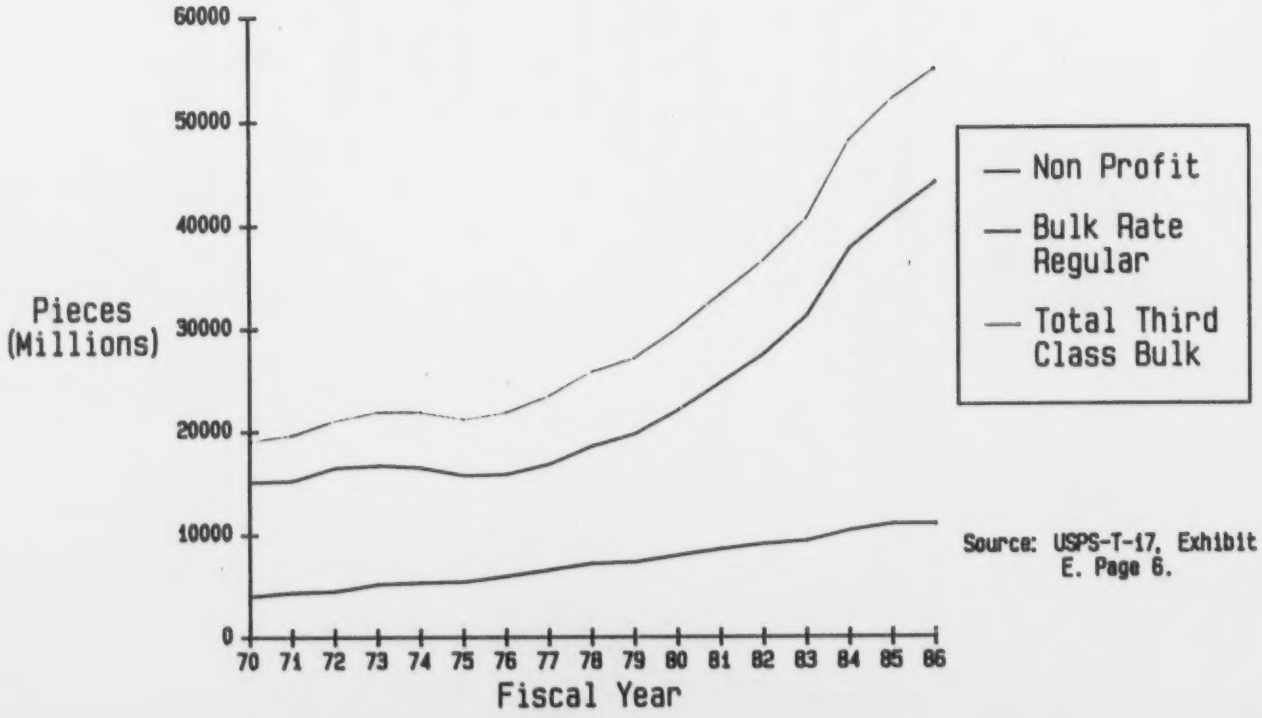
Source: USPS-T-17 Exhibit E. Page 6.
Starting in 1979, Regular rate includes presorted mail.
Starting in 1980, Nonprofit includes presorted mail.

THIRD CLASS MAIL VOLUME
(Pieces in Millions)



Source: USPS-T-17, Exhibit E. Page 6.

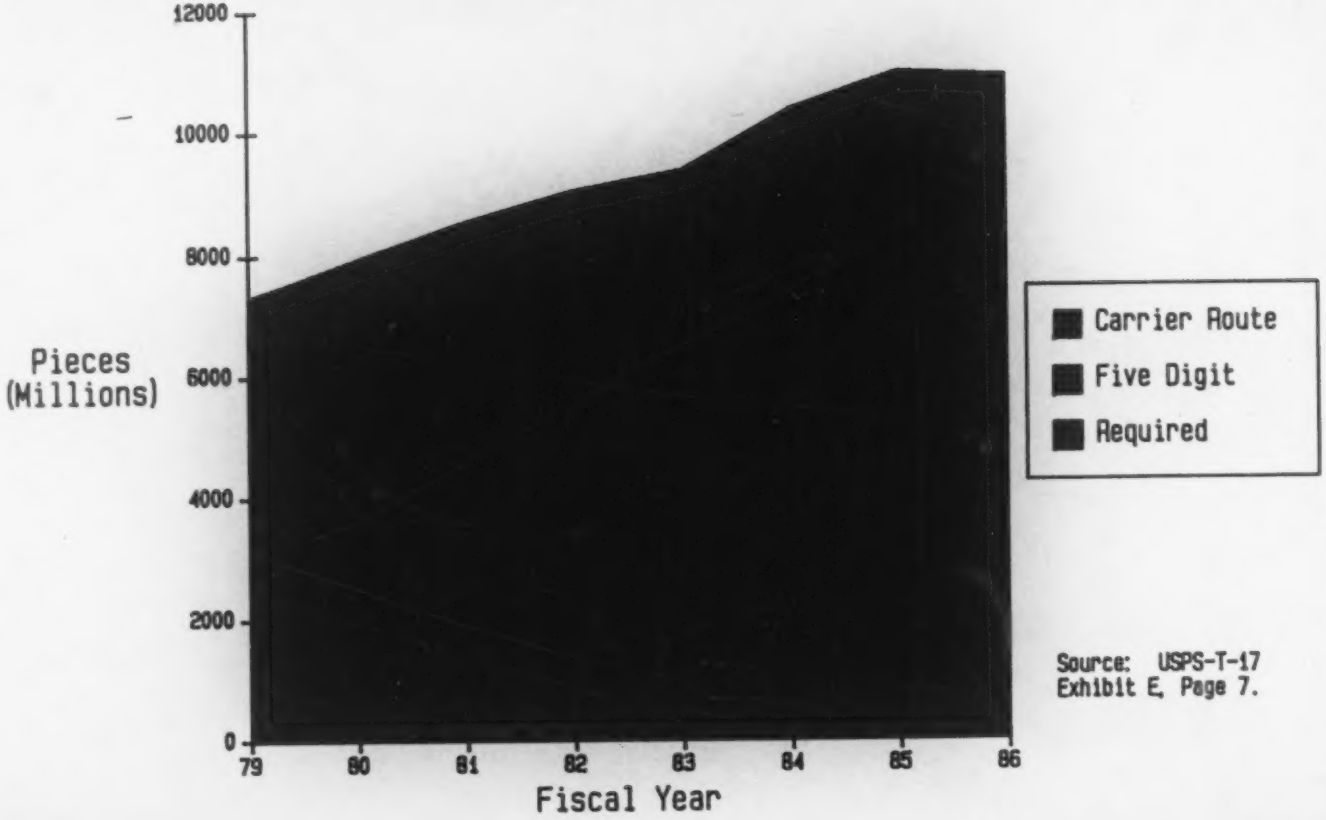
THIRD CLASS MAIL VOLUME
(Pieces in Millions)



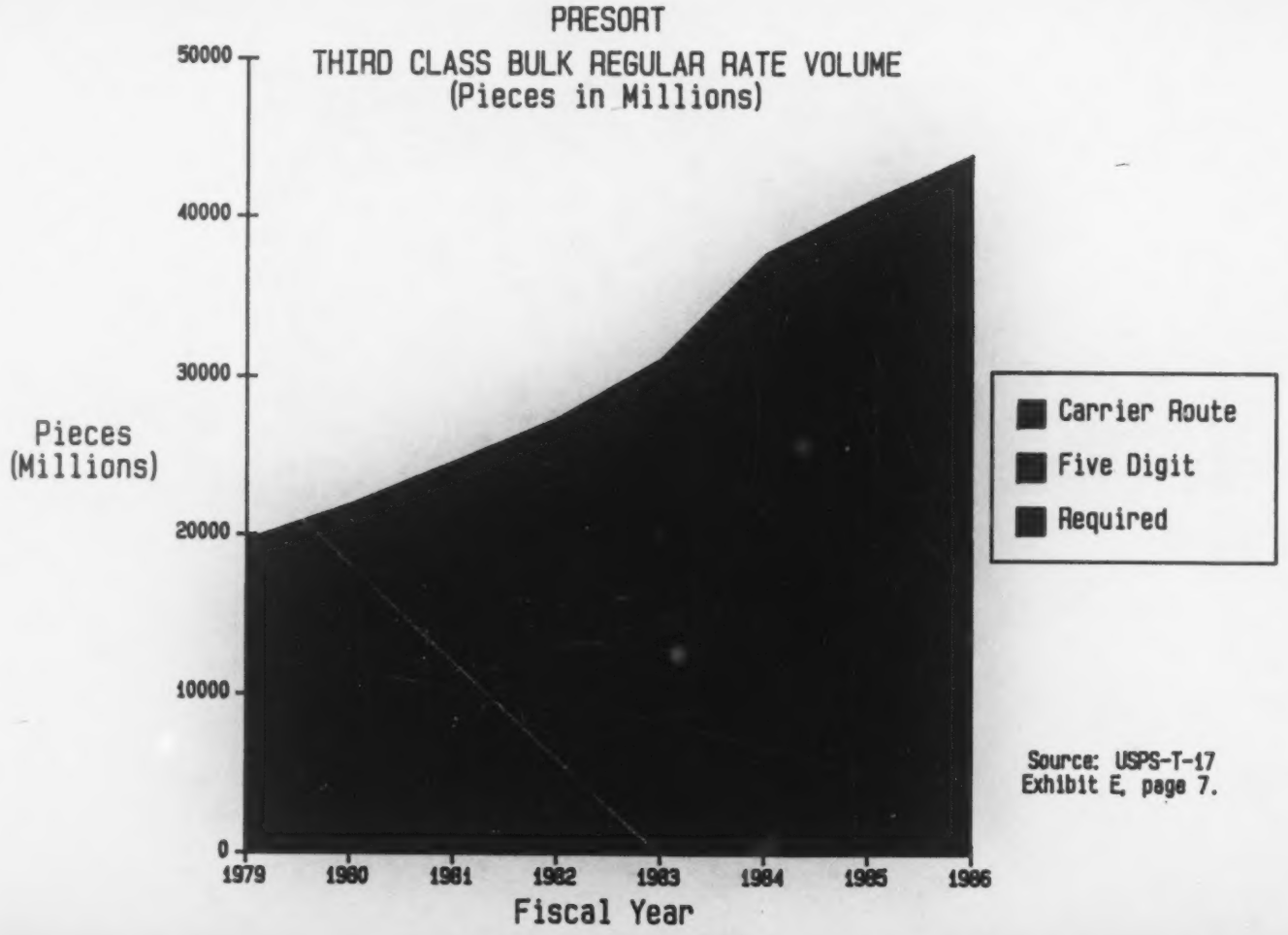
Source: USPS-T-17, Exhibit E. Page 6.

PRESORT

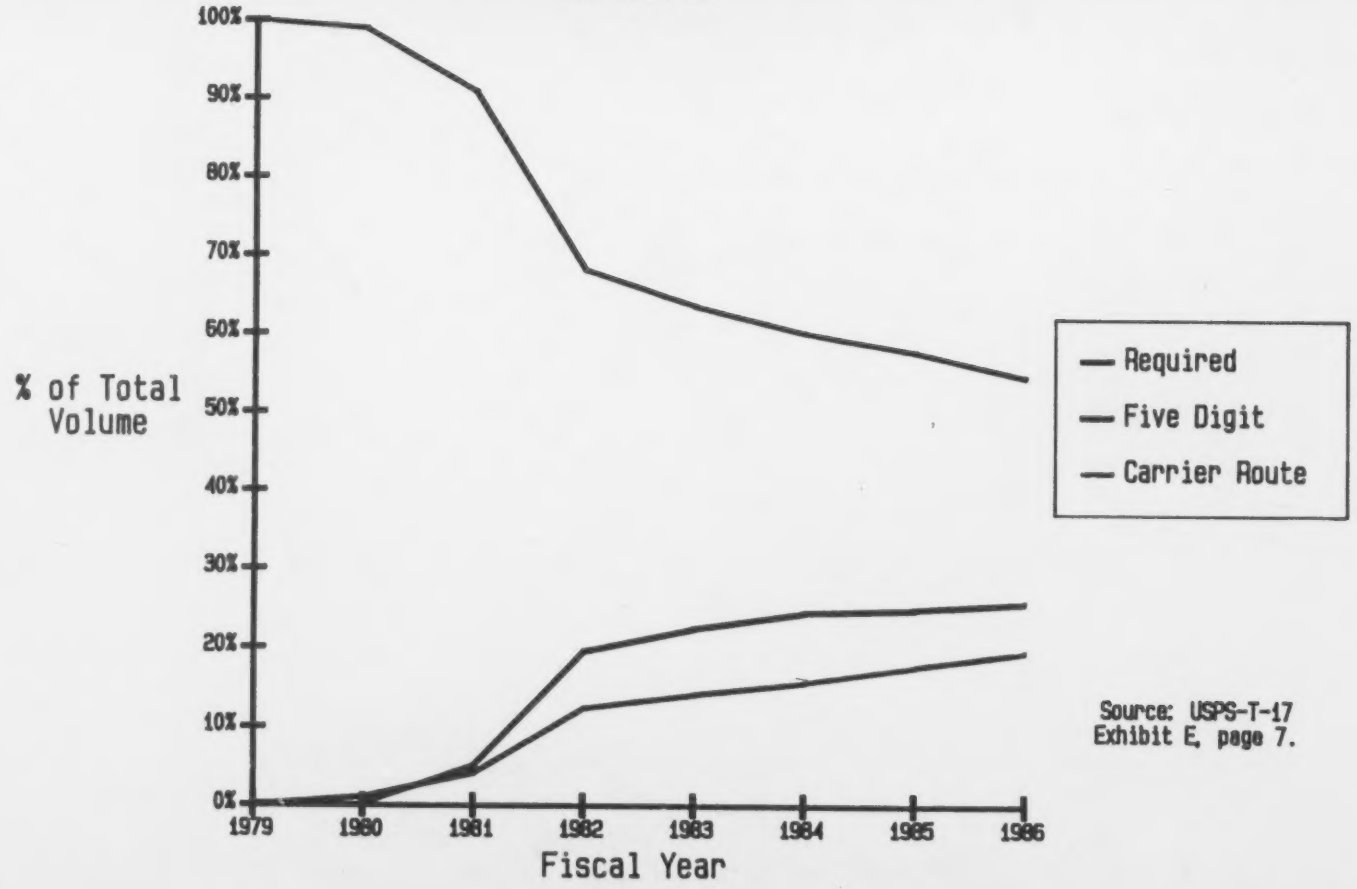
THIRD CLASS NONPROFIT MAIL VOLUME
(Pieces in Millions)



Source: USPS-T-17
Exhibit E, Page 7.

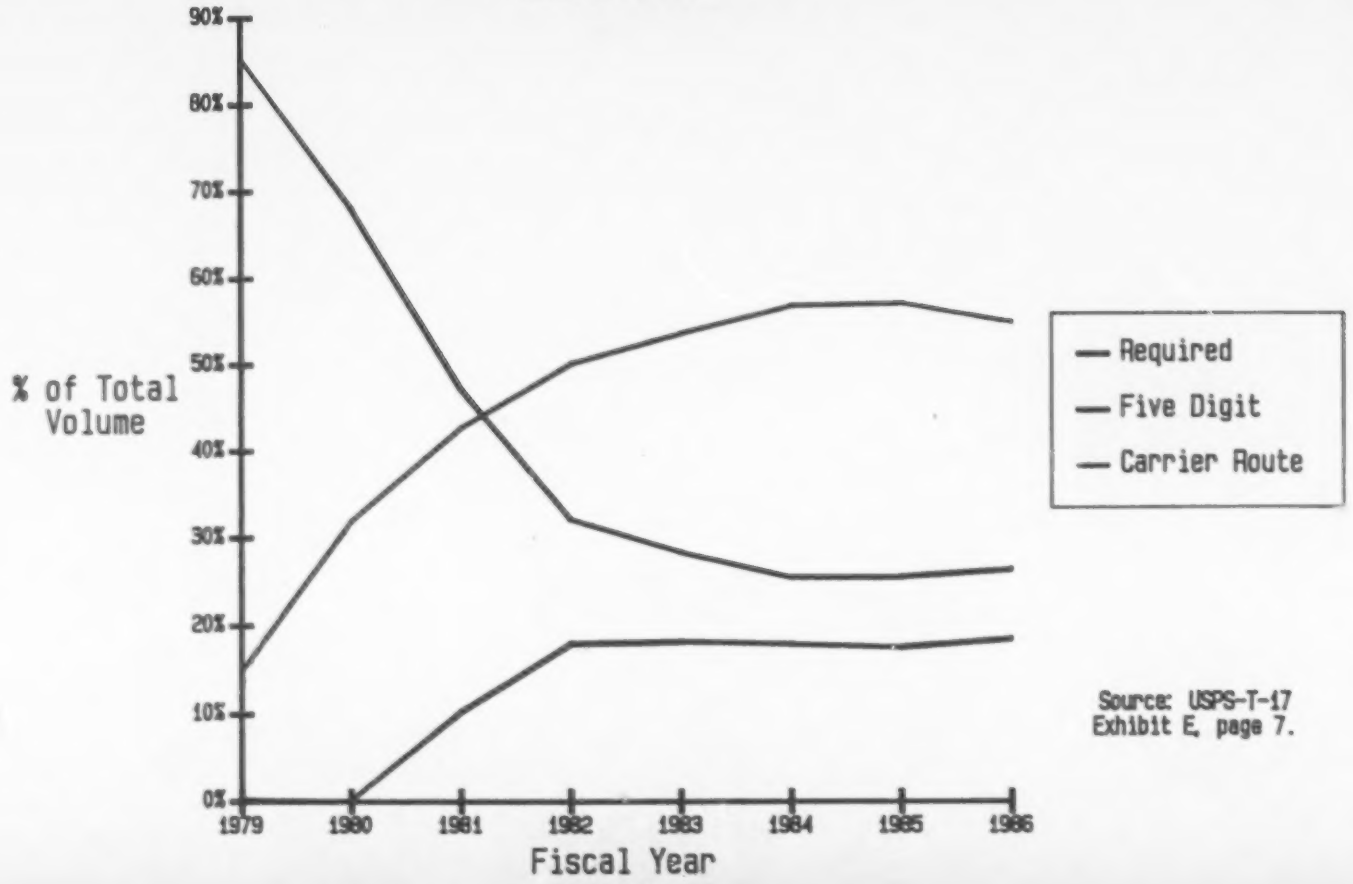

PRESORT
THIRD CLASS BULK REGULAR RATE VOLUME
(Pieces in Millions)
50000
40000
30000
20000
10000
0
Pieces
(Millions)
1979
1980
1981
1982
1983
1984
1985
1986
Fiscal Year
Carrier Route
Five Digit
Required
Source: USPS-T-17
Exhibit E, page 7.

PERCENT COMPOSITION OF THIRD CLASS
NONPROFIT



Source: USPS-T-17
Exhibit E, page 7.

PERCENT COMPOSITION OF THIRD CLASS BULK
REGULAR RATE



Source: USPS-T-17
Exhibit E, page 7.

STUDY OF POLITICAL ADVOCACY IN THIRD-CLASS NONPROFIT MAIL

POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

SEPTEMBER 1987

STUDY OF POLITICAL ADVOCACY IN THIRD-CLASS NONPROFIT MAIL

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Limiting Reduced-Rate Eligibility For Political-Advocacy Mail:

Constitutional Problems and Legislative Approaches..... APPENDIX

EXECUTIVE SUMMARY

Following publication of the Commission's 1986 Report to the Congress: Preferred Rate Study, Senator Ted Stevens, then Chairman of the Senate postal subcommittee, wrote to Postal Rate Commission Chairman Janet Steiger requesting (1) a study of political advocacy in the third-class nonprofit subclass, and (2) advice on eligibility-limiting legislation. The statistical data in this resulting report come from the nonprofit mail sample the Commission assembled for its 1986 study.

The report finds that:

- 13 percent of organizations eligible to use nonprofit mail used the mail for advocacy purposes.
- These organizations account for 7 percent of all third-class nonprofit mailings.
- Their advocacy mail is 21 percent of all pieces of nonprofit mail.

The mailers who account for most of the advocacy mail appear to be educational, philanthropic and religious organizations in part because they also send most of the third-class nonprofit mail.

The mailers whose advocacy mail represents the highest percentage of their total mail appear to be agricultural, veterans' and labor organizations.

This study divides political advocacy into two types, "action" and "opinion" advocacy. Action advocacy asks the recipient to do something, such as write to a lawmaker or contribute to a cause. Opinion advocacy seeks to influence the recipient's opinion to support a position of the organization. The data show that 12 percent of the mailpieces contain action advocacy; and 12 percent, opinion advocacy. Three percent contain both types. Roughly six percent of the mailpieces advocate approach to government bodies, suggesting writing, telephoning, or sending some other form of message.

The appendix discusses legal issues and concludes that any draft eligibility-limiting legislation should, for Constitutional reasons, be aimed at mailings rather than at entire organizations. That is, it should not make an eligible organization ineligible because it sends political-advocacy mailings.

BACKGROUND

In the Consolidated Omnibus Budget Reconciliation Act of 1985, Congress directed the Postal Rate Commission to conduct a study of several matters affecting the revenue forgone appropriation for the congressionally-designated preferred categories of mail. The Commission published its findings in a 1986 Report to the Congress: Preferred Rate Study. One of the subjects addressed in the report was the amount and kinds of advertising found in the nonprofit third-class subclass.[1] This aspect of the study had required assembling a substantial data base of actual mail pieces and postal forms (statements of mailing) obtained from well over a thousand nonprofit organizations. Noting the existence of this data base Senator Ted Stevens, then Chairman of the Senate Subcommittee on Civil Service, Post Office and General Services, wrote on September 9, 1986, to Postal Rate Commission Chairman Janet Steiger asking the Commission to conduct a further study to (1) measure and describe the political advocacy mail in the nonprofit third-class subclass, and (2) provide his subcommittee with advice on eligibility-limiting legislation. In response to the quantitative part of this request, the Commission engaged the original contractor to recode the mail pieces and to tabulate the resulting data.

DESCRIPTION OF THE QUANTITATIVE STUDY

The 1986 study employed a two-stage probability sample which was revised for this study. The first stage was a sample of 50 post offices (stratified by third-class revenue); the second stage consisted of a probability sample of 2,520 nonprofit third-class permit holders, disproportionately allocated to 5 sample-selection strata (Religious organizations; Educational;

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[1] For a complete description of the 1986 study on advertising see Report to the Congress: Preferred Rate Study, Vol. II, Appendix D, U.S. Postal Rate Commission, June 18, 1986.

Philanthropic; Fraternal; and Other Nonprofit.)[2] Permit holders were contacted by mail and asked to furnish a copy of each mail piece sent between March 16, 1985 and March 14, 1986, along with a copy of the associated statement of mailing (used to determine volume). Mail and telephone follow-ups were made.

Fifty-one percent of the sampled organizations responded providing a data base consisting of 18,515 mailings totaling 980 million mail pieces. While all nine types of eligible nonprofit permit holders were included in the sample, the response rate from qualifying political organizations was too low (only 5 responded of 100 contacted) for data from this relatively very small category to be included in this report.[3]

DEFINITION OF TERMS

This study divides political advocacy into action and opinion advocacy. The former consists of a message which attempts to secure some action by the recipient supporting a political position of the organization sending the message (e.g., writing a Congressman or Governor, sending money, voting for a particular candidate, participating in a demonstration, etc.) In contrast, opinion advocacy consists of a message which attempts to influence the recipient's opinion to support a political position of the organization.[4]

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[2] The sample was supplemented with 35 very large volume mailers which were entered with a sampling weight of one.

[3] The data presented in the Commission's 1986 report which dealt with advertising content did include data from political party committees because the results were not really affected by their low response rate. In contrast the current report deals with political advocacy in the mail, which could be affected by a low response rate from political party committees.

[4] A version of this division between action and opinion has been recognized even in legislation which seeks to treat all lobbying in a uniform way. Internal Revenue Code §4911(d) defines "influencing legislation" as:

> (A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

Fn. Cont'd.

This study also categorizes political issues into types as follows:

1. **Environmental issues** (including but not limited to wildlife conservation, occupational health, nuclear power),
2. **Economic issues** (including but not limited to welfare, unionization, migrant labor, employment discrimination, import curbs, budget issues, subsidies),
3. **Non-economic social issues** (including but not limited to educational quality, school prayer, gun control, equal rights amendment, abortion) and
4. **All other issues** (Defense, Foreign Policy, etc.)

The tables produced for this study present four types of data:

1. Percent of mail pieces.
2. Percent of mailings.
3. Percent of nonprofit organizations.
4. Percent of references.[5]

The type of data contained in a table is indicated in parentheses below the title.

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[5] This category is necessary because a given mail piece might have more than one item categorized as political advocacy. In this study a given piece could contain a maximum of five separate references.

SUMMARY OF THE DATA

As can be seen from summary Table A, 21 percent of nonprofit third-class mail pieces contain political advocacy, 13 percent of the organizations holding nonprofit third-class permits send political advocacy, and 7 percent of all nonprofit third-class mailings contain advocacy.

All types of nonprofit organizations send some advocacy mail ranging from a high of 60 percent for Agricultural organizations to a low of 4 percent for Scientific organizations. Educational, Philanthropic, and Religious organizations account for 84 percent of non-profit mail and 85 percent of mail containing political advocacy. However, the percent of their own mail pieces or mailings containing any advocacy is small relative to Agriculture, Veterans, and Labor organizations which have the largest percentage of advocacy volume and the largest percentage of mailings which contain advocacy. For example, only 2 percent of Religious organizations' mailings contain advocacy but they account for 19 percent of all advocacy mail sent while 23 percent of Agricultural organizations' mailings contain political advocacy but they only account for 4 percent of total advocacy mail.

Summary Table B shows the issues and processes that are the subjects of advocacy mail. It also shows differences with respect to mail pieces, mailings and number of organizations as did Table A above. To illustrate, using mail pieces (or volume) as the measure, federal issues outweigh state and local issues by ten to one. On the other hand, using number of organizations as the measure, almost as many nonprofit organizations are concerned with state and local political issues as they are with federal issues.

SUMMARY TABLE A

USE OF NONPROFIT THIRD CLASS
FOR POLITICAL ADVOCACY MESSAGES

Type of Organization	Percent of Mail Pieces Containing Advocacy	Percent of Organizations Sending Advocacy	Percent of Mailings Containing Advocacy	Percent of Total Advocacy Mail
Agricultural	60	47	23	4
Veterans	35	34	13	8
Labor	24	29	23	1
Fraternal	16	13	7	2
Scientific	4	15	3	1
Educational	20	19	9	29
Philanthropic	24	11	13	37
Religious	17	8	2	19
TOTAL	**21**	**13**	**7**	**100**

Source: Postal Rate Commission nonprofit mail study data June, 1986. Based on coding of actual mail pieces and postal forms.

SUMMARY TABLE B

SUBJECTS OF ADVOCACY MAIL

	Percent of:		
	Mail Pieces	Mail-ings	Organ-izations
TOTAL ADVOCACY	21	7	13
Percent Regarding			
Federal Issues	20	6	10
State/Local Issues	2	1	8
Electoral Process	1	*	1
Legislative Process	15	5	10
Foreign Country	1	*	2
Executive Process	11	4	7
Environmental Issues	*	*	2
Economic Issues	13	4	8
Social Issues	2	1	6
Other Issues (Foreign Policy, Defense, etc.)	11	3	7

* Less than 1%.

Source: Postal Rate Commission nonprofit mail study data June, 1986. Based on coding of actual mail pieces and postal forms.

With regard to processes they hope to influence, the legislative and executive processes are much more prevalent subjects of advocacy mail than are the electoral process or foreign countries. This holds true for mail pieces, mailings and organizations.

Finally economic issues and "other" issues are much more prevalent from the standpoint of percent of mail pieces and mailings than are environmental or social issues. However, social issues are almost as important subjects considering percent of organizations.

ANALYSIS OF THE DATA

All tables discussed in this section are presented following the text. Table 1 shows the percent of total nonprofit third-class mail pieces which contain political advocacy. The figure 10798 in the upper left corner of the table when multiplied by one million (see "projected number of mail pieces 000,000") is the total number of third-class nonprofit mail pieces. On the same row is shown the total number of pieces by type of permit. Thus, for example, Educational organizations account for 3,530,000,000 mail pieces.

It can be seen that 21 percent of the total mail contains some political advocacy and this is broken down further into 12 percent having action references and 12 percent having opinion references. The total of action plus opinion is greater than 21 percent owing to multiple references in the same mail piece. Virtually all Religious organizations' political-advocacy messages call for action; and with the exception of Philanthropic organizations, all other nonprofit organizations' messages are predominantly attempts to influence opinion. It is also clear that the percent of mail pieces with advocacy varies considerably by type of organization. The percent of mail pieces containing advocacy messages ranges from Agricultural organizations' mail at 60 percent to Fraternal and Religious organizations' mail at 16 and 17 percent respectively and to Scientific at 4 percent.

Table 1A subdivides the "any political advocacy" totals

shown in Table 1 into political action only, political opinion only and both. Nine percent of total nonprofit volume is political action only and nine percent is political opinion only. There is comparatively little volume which contains both types (three percent). Religious and Philanthropic organizations are the only organizations sending more action than opinion advocacy messages.

Table 1B shows the distribution of political-advocacy volume according to size of mailing. It can be seen that political-advocacy volume is primarily in the 10-50 thousand, 50-100 thousand, and the 100-500 thousand piece mailing categories. Over 90 percent of the volume of political-advocacy mail falls in those ranges. Educational organizations have well over half and Labor organizations have close to half of their volume in the 10-50 thousand category. Religious, Philanthropic, Agricultural, Veterans' and Fraternal organizations have the major portion of their volume in the 100-500 thousand piece mailing category.

With regard to Religious organizations' political-advocacy mail, this chart reveals that it is not individual churches which account for the bulk of it since only a very small percent is contained in mailings smaller than 10,000 pieces. Only 8 percent of Religious organizations' mailings are in the 10,000 to 500,000 piece category,[6] but 98 percent of their political-advocacy volume is contained in mailings of this volume range.

Table 1C shows the distribution of sizes of mailings for the total nonprofit mailstream and for mail that contains political advocacy. It clearly demonstrates that while very few mailings are larger than 10,000 pieces (14 percent at most) around half the mailings containing political advocacy are contained in the mailings of 10,000 pieces or larger. Taken together, Tables 1B and 1C clearly demonstrate that advocacy mailings are disproportionately large.

Table 1D shows the percent of political-advocacy volume sent

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[6] This point is based on data not contained in Table 1B.

by the different types of nonprofit organizations. The first column contains the percent of total nonprofit mail by type of organization. It can be seen that Religious permit holders account for 22 percent of the total mail, Educational permit holders account for 31 percent, etc. Examining the column headed "Any Political Advocacy", it can be seen that Religious permit holders account for 19 percent of mail pieces containing any political advocacy. This is close to the 22 percent of total nonprofit mail accounted for by Religious permit holders. Examining all categories of permit holders, Scientific permit holder organizations have a disproportionately small amount of political advocacy (accounting for six percent of the total mail but only one percent of the advocacy mail) while Agricultural permit holders have a disproportionately large amount (accounting for one percent of total mail and four percent of the advocacy). The remaining organization types contain advocacy pieces in rough proportion to their total volume.

Table 2 shows the percent of mailings (differentiating here mailings from mail pieces) containing advocacy by type of permit holder. Overall only seven percent of the mailings contain advocacy. The range is from a low of 2 percent for Religious organizations to a high of 23 percent of the mailings for both Agricultural and Labor organizations.

Table 3 shows the percent of organizations (differentiating here organizations from mail pieces as on Table 1 and mailings as on Table 2) in each category that sends political advocacy. It can be seen that 87 percent of total nonprofit organizations send no advocacy while 13 percent do send advocacy. The 13 percent of the nonprofit organizations account for 21 percent of the total volume containing any advocacy (See Table 1) and 7 percent of the total mailings (See Table 2). Only 8 percent of Religious organizations, 11 percent of the Philanthropic and 13 percent of the Fraternal organizations send any advocacy. At the other end of the spectrum, 47 percent of Agricultural permit holders, 34 percent of Veterans organizations and 29 percent of Labor permit holders send some advocacy.

Tables 4, 5, and 6 exhibit the issues of concern to advocacy mailers in terms of total pieces, mailings and number of organizations respectively. Examining the "total nonprofit" column in Table 4, it can be seen that federal issues outweigh state and local issues by ten to one. Moreover, advocacy mail is aimed primarily at the legislative and executive process. Comparatively little is aimed at the electoral process or at foreign countries. Further, advocacy mail is primarily directed at economic welfare issues and "other" issues. Little is directed at environmental issues or at non-economic social issues.

Only Agricultural organizations send a large portion of advocacy mail dealing with state and local issues. Almost all Religious organizations' advocacy mail aims at influencing the executive process while the majority of the advocacy mail of every other type of organization is aimed at the legislative process.

Religious organizations are again unique with virtually all their advocacy mail aimed at "other issues". Only Agricultural organizations aim a significant portion of their advocacy mail at environmental issues[7] and only Fraternal organizations aim more than 10 percent of their mail at non-economic social issues.

Table 5 presents information similar to the previous table only here it is expressed in terms of mailings. The magnitude of the numbers is much lower than in the previous table indicating that a smaller percent of mailings contains advocacy than the percent of volume. Other than magnitude, the relationship between the percentages seems to be roughly in line with those shown on Table 4.

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[7] It should be noted that many conservation groups list themselves as Educational organizations, a much larger category of nonprofit permit holders than Agricultural.

Table 6 also presents information similar to Table 4 only here it is expressed in terms of organizations. It can be seen that, in terms of organizations, nearly as many are concerned with state and local issues as with federal issues. This is much different from Table 4. It points out the fact that many organizations send small mailings and these mailings make up a small percentage of the total volume.[8]

The information on Table 6 with regard to electoral process, etc., is roughly similar to that in Table 4 except for Religious organizations. On Table 6 almost as many Religious organizations are concerned with the legislative process as with the executive process. Moreover, a significant percent of Religious organizations are concerned with foreign countries. Finally the patterns with respect to environmental issues, etc., are significantly different on Table 6 in comparison to Table 4 for the columns labeled "total", "religious", "educational" and "philanthropic" organizations. The distribution of organizations tends to be much more even (Table 6) than is the distribution of volume (Table 4), again reflecting the heterogeneity of the small volume mailings.

Table 7 breaks down specific actions urged by advocacy mail (as a percent of all action advocacy pieces). Thus, for all nonprofit organizations' action-advocacy mail (first column), 23 percent of the pieces request the recipient to send a prepared form or card, 23 percent request sending a letter in recipient's own words and 8 percent request a phone call or mailgram be sent. Only one percent request the recipient to participate in a demonstration. Almost half request the recipient to send money, and, interestingly, under one percent of all action-advocacy mail requests a contribution for a specific candidate. Overall,

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[8] Table 1C indicated that 59 percent of all mailings contain less than 1,000 pieces.

little action advocacy mail asks the recipient to vote in a particular way or urges generalized support.

Virtually all Religious action-advocacy mail urges the recipient to send money. This percentage for Religious organizations exceeds by far the percentage for all other types of organizations, including Philanthropic. Organizations qualifying as Educational also have a very large percentage of their action-advocacy mail pieces requesting donations for political causes. Calling on the recipients to send letters or cards predominates in other organizations' action-advocacy pieces.

Table 8 provides a further breakdown of action advocacy in terms of type of issue. Again the percentages shown are for all action-advocacy pieces. Examining the total column, it can be seen that sending money is the dominant type of action requested. Moreover, sending money accounts for 57 percent of the action-advocacy pieces directed at all other issues. For the other three categories of issues, sending a letter is the dominant category of action requested.

Table 9 provides some details on the types of mail pieces in which political-advocacy messages are sent. There is proportionately more political advocacy in magazines and journals, and in catalogues, brochures and pamphlets and proportionately less in cards and letters. This is consistent with other findings indicating political-advocacy mail is sent in larger mailings.

Finally Table 10 shows the relationship between advertising (the subject of the 1986 study) and advocacy. Comparing the first column (no advertising) with the second (any advertising), it can be seen that the percentage of advocacy mail does not differ greatly. It seems fair to conclude that there is little relation between them.

The remaining tables 11, 12, 13, and 14 are expressed in terms of the percent of references. They are not discussed here but are included for the convenience of the reader.

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TABLE I
QUANTITY OF POLITICAL ADVOCACY IN MAIL SENT BY NON-PROFIT ORGANIZATIONS

(PERCENT OF MAIL PIECES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10798	2832	3530	745	2675	76	75	554	311
PERCENT OF MAIL CONTAINING	100.	100.	100.	100.	100.	100.	100.	100.	100.
NO POLITICAL ADVOCACY	79.	83.	80.	96.	76.	40.	76.	65.	84.
ANY POLITICAL ADVOCACY	21.	17.	20.	4.	24.	60.	24.	35.	16.
ACTION*	12.	17.	3.	*	17.	21.	11.	21.	*
OPINION**	12.	*	17.	4.	12.	60.	18.	30.	16.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1985. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 1A
QUANTITY OF POLITICAL ADVOCACY IN MAIL SENT BY NON-PROFIT ORGANIZATIONS

(PERCENT OF MAIL PIECES)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10798	2832	3530	745	2675	76	75	554	311
PERCENT OF MAIL CONTAINING	100.	100.	100.	100.	100.	100.	100.	100.	100.
NO POLITICAL ADVOCACY	79.	83.	80.	96.	76.	40.	76.	65.	84.
POLITICAL ACTION ONLY	9.	17.	3.	*	13.	1.	7.	5.	*
POLITICAL OPINION ONLY	9.	*	16.	4.	7.	39.	13.	14.	16.
BOTH ACTION AND OPINION	3.	*	*	*	4.	20.	5.	16.	*

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 16
RELATIONSHIP BETWEEN VOLUME AND MAILINGS

(PERCENT OF ADVOCACY MAIL PIECES)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAIL PIECES(000,000) (ADVOCACY)	2,267	481	706	30	642	46	18	194	50
TOTAL MAILINGS	100.	100.	100.	100.	100.	100.	100.	100.	100.
UP TO 1,000 PCS.	1.	*	1.	1.	*	*	5.	*	2.
1,001-5,000 PCS.	2.	1.	2.	3.	1.	3.	16.	1.	3.
5,001-10,000 PCS.	2.	1.	4.	2.	1.	*	10.	*	1.
10,000-50,000 PCS.	30.	11.	60.	19.	21.	27.	44.	13.	4.
50,001-100,000 PCS.	24.	34.	22.	*	24.	28.	19.	19.	13.
100,001-500,000 PCS.	38.	53.	11.	11.	49.	42.	3.	52.	77.
500,001-1,000,000 PCS.	2.			15.	4.		3.		
OVER 1,000,000 PCS.	2.			49.				15.	

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 1C
RELATIONSHIP BETWEEN VOLUME AND MAILINGS

(PERCENT OF MAILINGS)

		MAIL CONTAINING			
	TOTAL	NO POLITICAL ADVOCACY	ANY POLITICAL ADVOCACY	ACTION	OPINION
PROJECTED NUMBER OF MAILINGS (000)	1,498	1,397	101	48	66
TOTAL MAILINGS	100.	100.	100.	100.	100.
UP TO 1,000 PCS.	59.	61.	30.	38.	28.
1,001-5,000 PCS.	21.	21.	17.	13.	21.
5,001-10,000 PCS.	6.	5.	6.	4.	7.
10,000-50,000 PCS.	9.	7.	32.	25.	34.
50,001-100,000 PCS.	2.	1.	9.	12.	6.
100,001-500,000 PCS.	1.	1.	6.	8.	4.
500,001-1,000,000 PCS.	*	*	*	*	*
OVER 1,000,000 PCS.	*	*	*	*	*

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 1D
PROPORTION OF POLITICAL ADVOCACY MAIL GENERATED BY DIFFERENT TYPES OF NON-PROFIT ORGANIZATIONS

(PERCENT OF MAIL PIECES)

		MAIL CONTAINING			
	TOTAL	NO POLITICAL ADVOCACY	ANY POLITICAL ADVOCACY	ACTION	OPINION
TOTAL NON-PROFIT ORGANIZATIONS	100.	100.	100.	100.	100.
RELIGIOUS	22.	23.	19.	33.	1.
EDUCATIONAL	31.	31.	29.	9.	43.
PHILANTHROPIC	32.	30.	37.	47.	31.
FRATERNAL	2.	3.	2.	*	3.
SCIENTIFIC	6.	7.	1.	*	2.
AGRICULTURAL	1.	1.	4.	2.	7.
LABOR	1.	1.	1.	1.	1.
VETERANS	5.	4.	8.	8.	12.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 2
QUANTITY OF POLITICAL ADVOCACY IN MAIL SENT BY NON-PROFIT ORGANIZATIONS

(PERCENT OF MAILINGS)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAILINGS (000)	1498	634	504	45	185	23	17	36	52
PERCENT OF MAIL CONTAINING	100.	100.	100.	100.	100.	100.	100.	100.	100.
NO POLITICAL ADVOCACY	93.	98.	91.	97.	87.	77.	77.	87.	93.
ANY POLITICAL ADVOCACY	7.	2.	9.	3.	13.	23.	23.	13.	7.
ACTION*	3.	2.	2.	*	9.	8.	9.	7.	5.
OPINION**	4.	1.	7.	2.	7.	20.	18.	10.	4.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 3
QUANTITY OF POLITICAL ADVOCACY IN MAIL SENT BY NON-PROFIT ORGANIZATIONS

(PERCENT OF ORGANIZATIONS)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF ORGANIZATIONS (000)	304	136	81	4	39	4	7	10	23
PERCENT OF MAIL CONTAINING	100.	100.	100.	100.	100.	100.	100.	100.	100.
NO POLITICAL ADVOCACY	87.	92.	81.	85.	89.	53.	71.	66.	87.
ANY POLITICAL ADVOCACY	13.	8.	19.	15.	11.	47.	29.	34.	13.
ACTION ADVOCACY*	9.	6.	12.	6.	7.	33.	25.	24.	8.
ATTITUDE ADVOCACY**	9.	5.	14.	13.	9.	35.	24.	27.	9.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.

** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 4
QUANTITY OF DIFFERENT KINDS OF INFLUENCE DESIRED

(PERCENT OF MAIL PIECES)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10798	2832	3530	745	2675	76	75	554	311
PERCENT OF MAIL REGARDING:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL ISSUES	20.	17.	19.	3.	24.	57.	16.	35.	16.
STATE/LOCAL ISSUES	2.	*	2.	3.	1.	40.	14.	2.	*
ELECTORAL PROCESS	1.		2.		*	*	5.		
LEGISLATIVE PROCESS	15.	*	15.	4.	22.	57.	19.	31.	15.
FOREIGN COUNTRY	1.	*	*		3.	7.	2.	7.	
EXECUTIVE PROCESS	11.	17.	14.	*	7.	23.	5.	6.	13.
ENVIRONMENTAL ISSUES*	*	*	*	*	*	25.	*		*
ECONOMIC WELFARE**	13.	*	19.	3.	13.	60.	22.	31.	14.
NON ECONOMICAL/SOCIAL ISSUES***	2.	*	1.	3.	1.	8.	6.	6.	13.
OTHER ISSUES	11.	17.	1.	*	19.	10.	3.	16.	14.

* ENVIRONMENTAL ISSUES: WILDLIFE CONSERVATION, OCCUPATION HEALTH, NUCLEAR POWER PLANT ISSUES, CONSUMER PRODUCTS
** ECONOMIC WELFARE ISSUES: UNIONIZATION AND RIGHT-TO-WORK ISSUES, MIGRANT LABOR, EMPLOYMENT DISCRIMINATION, IMPORT CURBS OR DUTIES, BUDGET ISSUES.
*** NON-ECONOMIC SOCIAL ISSUES: EDUCATIONAL QUALITY, SCHOOL PRAYER, GUN CONTROL, EQUAL RIGHTS AMENDMENT, ABORTION RIGHTS

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 5
QUANTITY OF DIFFERENT KINDS OF INFLUENCE DESIRED

(PERCENT OF MAILINGS)

		TYPE OF ORGANIZATION							
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF MAILINGS (000)	1498	634	504	45	185	24	17	36	52
PERCENT OF MAIL REGARDING:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL ISSUES	6.	2.	8.	2.	12.	19.	15.	13.	5.
STATE/LOCAL ISSUES	1.	*	2.	1.	1.	11.	12.	1.	2.
ELECTORAL PROCESS	*		1.		*	1.	2.	*	
LEGISLATIVE PROCESS	5.	1.	7.	2.	11.	21.	20.	11.	6.
FOREIGN COUNTRY	*	*	*		1.	2.	1.	1.	
EXECUTIVE PROCESS	4.	2.	6.	1.	4.	7.	6.	2.	2.
ENVIRONMENTAL ISSUES*	*	*	1.	*	*	8.	1.		2.
ECONOMIC WELFARE**	4.	*	7.	1.	6.	22.	21.	11.	4.
NON ECONOMICAL/SOCIAL ISSUES***	1.	*	1.	1.	2.	1.	5.	1.	1.
OTHER ISSUES	3.	2.	1.	*	8.	3.	3.	8.	1.

* ENVIRONMENTAL ISSUES: WILDLIFE CONSERVATION, OCCUPATION HEALTH, NUCLEAR POWER PLANT ISSUES, CONSUMER PRODUCTS
** ECONOMIC WELFARE ISSUES: UNIONIZATION AND RIGHT-TO-WORK ISSUES, MIGRANT LABOR, EMPLOYMENT DISCRIMINATION, IMPORT CURBS OR DUTIES, BUDGET ISSUES.
*** NON-ECONOMIC SOCIAL ISSUES: EDUCATIONAL QUALITY, SCHOOL PRAYER, GUN CONTROL, EQUAL RIGHTS AMENDMENT, ABORTION RIGHTS

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 6
QUANTITY OF DIFFERENT KINDS OF INFLUENCE DESIRED

(PERCENT OF ORGANIZATIONS)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
PROJECTED NUMBER OF ORGANIZATIONS (000)	304	136	81	4	39	4	7	10	23
PERCENT OF MAIL REGARDING:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL ISSUES	10.	6.	15.	13.	7.	35.	24.	32.	10.
STATE/LOCAL ISSUES	8.	4.	12.	9.	7.	35.	18.	8.	6.
ELECTORAL PROCESS	1.		1.		2.	6.	8.	2.	
LESISLATIVE PROCESS	10.	4.	16.	13.	9.	41.	26.	31.	11.
FOREIGN COUNTRY	2.	2.	2.		2.	8.	3.	3.	
EXECUTIVE PROCESS	7.	5.	11.	7.	5.	20.	13.	15.	6.
ENVIRONMENTAL ISSUES*	2.	1.	3.	4.	2.	16.	1.		1.
ECONOMIC WELFARE**	8.	3.	12.	8.	8.	41.	29.	31.	8.
NON ECONOMICAL/SOCIAL ISSUES***	6.	3.	12.	9.	5.	6.	9.	10.	4.
OTHER ISSUES	7.	6.	8.	6.	5.	16.	8.	19.	6.

* ENVIRONMENTAL ISSUES: WILDLIFE CONSERVATION, OCCUPATION HEALTH, NUCLEAR POWER PLANT ISSUES, CONSUMER PRODUCTS
** ECONOMIC WELFARE ISSUES: UNIONIZATION AND RIGHT-TO-WORK ISSUES, MIGRANT LABOR, EPPLOYMENT DISCRIMINATION, IMPORT CURBS OR DUTIES, BUDGET ISSUES.
*** NON-ECONOMIC SOCIAL ISSUES: EDUCATIONAL QUALITY, SCHOOL PRAYER, GUN CONTROL, EQUAL RIGHTS AMENDMENT, ABORTION RIGHTS

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 7
RECOMMENDED MEANS OF ACCOMPLISHING POLITICAL ADVOCACY ACTION

(PERCENT OF MAIL PIECES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
PERCENT OF MAIL PIECES CONTAINING ACTION REFERENCES REQUESTING	100.	100.	100.	100.	100.	100.	100.	100.	100.
SEND A PREPARED FORM OR CARD	23.	*	*	89.	50.	3.	16.	*	7.
SEND OWN LETTER USING OWN WORDS	23.	1.	8.	2.	26.	71.	61.	90.	73.
CALL OR TRANSMIT ELECTRONICALLY	8.	*	1.		9.	10.	4.	42.	7.
PHYSICAL DEMONSTRATION	1.	*	3.	*	*	*	4.	6.	
AT GOVERNMENTAL SITE	1.	*	3.	*	*		*	4.	
NOT AT GOVT. SITE	*	*	*			*	3.	2.	
SEND MONEY (OR PLEDGE) FOR	48.	99.	78.		19.	8.	20.	4.	
CANDIDATES CAMPAIGN	*		2.		*	*	1.		
ANY OTHER REASON	48.	99.	68.		19.	8.	20.	4.	
VOTE	2.		18.		*	*	6.	*	
GENERALIZED SUPPORT	1.	*	2.	8.		36.	*	*	20.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 8
HOW NON-PROFIT ORGANIZATIONS USE THE MAILS TO INFLUENCE SELECTED POLITICAL ISSUES

(PERCENT OF MAIL PIECES)

		ISSUES			
	TOTAL	ENVIRON-MENTAL	ECONOMIC WELFARE	NON-ECONOMIC SOCIAL	ALL OTHERS
MEANS OF ACCOMPLISHING INFLUENCE	100.	100.	100.	100.	100.
SEND A PREPARED FORM/ CARD	23.	34.	*	*	35.
SEND OWN LETTER USING OWN WORDS	23.	57.	53.	66.	
CALL/WRITE/TRANSMIT ELECTRONICALLY	8.	5.	25.	6.	*
PHYSICAL DEMONSTRATION	1.		1.	11.	1.
AT GOVERNMENTAL SITE	1.		1.	11.	*
NOT AT GOVT. SITE	*		*		*
SEND MONEY OR MAKE PLEDGE	48	8.	40.	24.	57.
CANDIDATE'S CAMPAIGN	*		1.		
FOR OTHER PURPOSES	48.		31.	2.	57.
VOTE	2.		5.	6.	*
GENERALIZED SUPPORT	1.	8.	3.	16.	*

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 9
MAIL IN WHICH POLITICAL ADVOCACY MESSAGES ARE SENT

(PERCENT OF MAIL PIECES)

		MAIL CONTAINING			
	TOTAL	NO POLITICAL ADVOCACY	ANY POLITICAL ADVOCACY	ACTION	OPINION
TYPE OF MAILPIECE					
	100.	100.	100.	100.	100.
MAGAZINES/JOURNALS	13.	9.	26.	18.	45.
NEWSLETTER	9.	9.	7.	7.	8.
LETTER	67.	68.	62.	71.	41.
CARD	32.	35.	23.	46.	1.
CATALOGUE, BROCHURE, FLYER, PAMPHLET	29.	27.	38.	32.	36.
MERCHANDISE	5.	6.	*	*	*
APPLICATION	19.	15.	33.	6.	58.
CALENDAR	*	1.	*		*
RETURN ENVELOPE	64.	63.	67.	77.	48.
OTHER	2.	1.	4.	3.	6.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE ENCLOSURES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 10
RELATIONSHIP BETWEEN ADVERTISING AND ADVOCACY MAILING

(PERCENT OF MAIL PIECES)

	NON-PROFIT MAIL					
			ADVERTISING			
	NO ADVERTISING	ANY ADVERTISING	MINIMAL	MORE CONTENT	MORE ADVERTISING	ONLY ADVERTISING
PROJECTED NUMBER OF MAIL PIECES(000,000)	7,794	3,032	454	890	438	1,250
PERCENT OF MAIL CONTAINING	100.	100.	100.	100.	100.	100.
NO POLITICAL ADVOCACY	81.	76.	40.	54.	89.	100.
ANY POLITICAL ADVOCACY	19.	24.	60.	46.	11.	*
ACTION*	12.	10.	32.	15.	7.	
OPINION**	7.	23.	55.	44.	11.	*

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 11
DIFFERENT WAYS TO LOOK AT THE RELATIONSHIP BETWEEN TYPE OF ADVOCACY AND GOVERNMENTAL LEVELS OF CONCERN

(PERCENT OF REFERENCES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
POLITICAL ACTION ADVOCACY DIRECTED AT:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL LEVEL	85.	82.	77.	79.	98.	74.	71.	96.	65.
STATE LEVEL	15.	18.	23.	21.	2.	26.	29.	4.	35.
POLITICAL OPINION ADVOCACY DIRECTED AT:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL LEVEL	79.	76.	75.	63.	91.	63.	44.	97.	91.
STATE LEVEL	21.	24.	25.	37.	9.	37.	56.	3.	9.
ANY ADVOCACY DIRECTED AT:	100.	100.	100.	100.	100.	100.	100.	100.	100.
FEDERAL LEVEL	81.	81.	75.	64.	93.	65.	50.	97.	77.
STATE LEVEL	19.	19.	25.	36.	7.	35.	50.	3.	23.

(TABLE CONTINUES ON NEXT PAGE)

TABLE 11 (Cont.)
DIFFERENT WAYS TO LOOK AT THE RELATIONSHIP BETWEEN TYPE OF ADVOCACY AND GOVERNMENTAL LEVELS OF CONCERN

(PERCENT OF REFERENCES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
ANY FEDERAL ADVOCACY MAIL:	100.	100.	100.	100.	100.	100.	100.	100.	100.
CALLING FOR POLITICAL ACTION	32.	82.	20.	10.	33.	20.	31.	23.	45.
ATTEMPTING TO CHANGE OPINIONS	68.	18.	80.	90.	67.	80.	69.	77.	55.
ANY STATE OR LOCAL ADVOCACY MAIL:	100.	100.	100.	100.	100.	100.	100.	100.	100.
CALLING FOR POLITICAL ACTION	24.	76.	19.	5.	10.	13.	13.	27.	81.
ATTEMPTING TO CHANGE OPINION	76.	24.	81.	95.	90.	87.	87.	73.	19.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 12
RECOMMENDED MEANS OF ACCOMPLISHING POLITICAL ADVOCACY ACTION

(PERCENT OF REFERENCES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION							
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL
PERCENT OF ACTION REFERENCES REQUESTING	100.	100.	100.	100.	100.	100.	100.	100.	100.
SEND A PREPARED FORM OR CARD	13.	7.	1.	39.	32.	3.	7.	3.	3.
SEND OWN LETTER USING OWN WORDS	40.	33.	43.	21.	30.	71.	48.	59.	63.
CALL OR TRANSMIT ELECTRONICALLY	10.	*	10.		17.	6.	7.	21.	3.
PHYSICAL DEMONSTRATION	8.	6.	20.	1.	1.	1.	3.	11.	
AT GOVERNMENTAL SITE	6.	5.	16.	1.	1.		1.	10.	
NOT AT GOVT. SITE	2.	1.	5.			1.	1.	1.	
SEND MONEY (OR PLEDGE) FOR	23.	45.	20.		19.	5.	18.	5.	
CANDIDATES CAMPAIGN	1.		1.		*	1.	3.	2.	
ANY OTHER REASON	23.	45.	19.		19.	4.	15.	2.	
VOTE	1.		2.		*	2.	8.	1.	
GENERALIZED SUPPORT	6.	9.	4.	39.		12.	8.	1.	32.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1966. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 13
HOW NON-PROFIT ORGANIZATIONS USE THE MAILS TO INFLUENCE SELECTED POLITICAL ISSUES

(PERCENT OF REFERENCES)

		ISSUES			
	TOTAL	ENVIRON-MENTAL	ECONOMIC WELFARE	NON-ECONOMIC SOCIAL	ALL OTHERS
TYPE OF ADVOCACY	100.	100.	100.	100.	100.
ACTION	30.	18.	23.	38.	42.
OPINION	70.	82.	77.	62.	58.
GOVERNMENTAL LEVEL OF CONCERN	100.	100.	100.	100.	100.
FEDERAL ISSUES	80.	44.	81.	64.	91.
STATE/LOCAL ISSUES	20.	56.	19.	36.	9.
POLITICAL PROCESS BEING INFLUENCED	100.	100.	100.	100.	100.
ELECTORAL PROCESS	2.		3.	2.	1.
LEGISLATIVE PROCESS	65.	64.	73.	69.	48.
FOREIGN COUNTRIES	4.	6.	*	6.	9.
EXECUTIVE PROCESS	29.	31.	24.	23.	43.

(TABLE CONTINUES ON NEXT PAGE)

TABLE 13 (Cont'd)
HOW NON-PROFIT ORGANIZATIONS USE THE MAILS TO INFLUENCE SELECTED POLITICAL ISSUES

(PERCENT OF REFERENCES)

		ISSUES			
	TOTAL	ENVIRON-MENTAL	ECONOMIC WELFARE	NON-ECONOMIC SOCIAL	ALL OTHERS
MEANS OF ACCOMPLISHING INFLUENCE	100.	100.	100.	100.	100.
SEND A PREPARED FORM/ CARD	12.	1.	3.	1.	27.
SEND OWN LETTER USING OWN WORDS	48.	44.	52.	58.	21.
CALL/WRITE/TRANSMIT ELECTRONICALLY	18.	17.	15.	14.	2.
PHYSICAL DEMONSTRATION	8.		3.	13.	10.
AT GOVERNMENTAL SITE	6.		3.	13.	7.
NOT AT GOVT. SITE	2.		*		4.
SEND MONEY OR MAKE PLEDGE	24.		20.	3.	36.
CANDIDATE'S CAMPAIGN	1.		1.		*
FOR OTHER PURPOSES	23.		19.	3.	36.
VOTE	1.		2.	2.	*
GENERALIZED SUPPORT	6.	38.	5.	8.	4.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 14
HOW NON-PROFIT ORGANIZATIONS USE THE MAILS TO INFLUENCE FOUR BROAD CATEGORIES OF POLITICAL PROCESSES

(PERCENT OF REFERENCES)

	TOTAL	POLITICAL PROCESSES			
		ELECTORAL CAMPAIGNS /CANDI-DATES	LEGIS-LATIVE ACTIONS	ACTIONS OF FOREIGN COUNTRY	EXECUTIVE BRANCH ACTIONS
TYPE OF ADVOCACY	100.	100.	100.	100.	100.
ACTION	28.	85.	27.	36.	26.
OPINION	72.	15.	73.	64.	74.
GOVERNMENTAL LEVEL OF CONCERN	100.	100.	100.	100.	100.
FEDERAL ISSUES	83.	80.	78.	82.	94.
STATE/LOCAL ISSUES	17.	20.	22.	18.	6.
ISSUES	100.	100.	100.	100.	100.
ENVIRONMENTAL	5.		5.	7.	5.
ECONOMIC WELFARE	56.	79.	63.	6.	45.
NON-ECONOMIC SOCIAL	10.	8.	11.	18.	8.
ALL OTHERS	29.	13.	21.	68.	42.

(TABLE CONTINUES ON NEXT PAGE)

TABLE 14 (Cont'd.)
HOW NON-PROFIT ORGANIZATIONS USE THE MAILS TO INFLUENCE FOUR BROAD CATEGORIES OF POLITICAL PROCESSES

(PERCENT OF REFERENCES)

		POLITICAL PROCESSES			
	TOTAL	ELECTORAL CAMPAIGNS /CANDI-DATES	LEGIS-LATIVE ACTIONS	ACTIONS OF FOREIGN COUNTRY	EXECUTIVE BRANCH ACTIONS
MEANS OF ACCOMPLISHING INFLUENCE	100.	100.	100.	100.	100.
SEND A PREPARED FORM/ CARD	12.		17.	5.	5.
SEND OWN LETTER USING OWN WORDS	48.	1.	51.	54.	18.
CALL/WRITE/TRANSMIT ELECTRONICALLY	9.		14.	8.	1.
PHYSICAL DEMONSTRATION	7.		4.	5.	17.
AT GOVERNMENTAL SITE	6.		4.	3.	12.
NOT AT GOVT. SITE	1.		*	1.	5.
SEND MONEY OR MAKE PLEDGE	24.	92.	7.		53.
CANDIDATE'S CAMPAIGN	1.	10.			
FOR OTHER PURPOSES	23.	82.	7.		53.
VOTE	1.	6.	1.		
GENERALIZED SUPPORT	6.	1.	6.	28.	5.

* POLITICAL ADVOCACY-ACTION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF SECURING SOME ACTION TOWARD A GOVERNMENTAL BODY IN SUPPORT OF THE POSITIONS OF THE ORIGINATING ORGANIZATION.
** POLITICAL ADVOCACY-OPINION: IS AN ORGANIZATIONAL MESSAGE TO RECIPIENTS HAVING THE INTENTION OF INFLUENCING OPINION ON MATTERS OF GOVERNMENTAL CONCERN.

NOTE: PERCENTAGES CAN SUM TO OVER 100% DUE TO MULTIPLE POLITICAL ADVOCACY REFERENCES IN THE SAME MAILING PIECE.
SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY DATA JUNE, 1986. BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

APPENDIX

LIMITING REDUCED-RATE ELIGIBILITY FOR POLITICAL ADVOCACY MAIL: CONSTITUTIONAL PROBLEMS AND LEGISLATIVE APPROACHES

This Appendix discusses possibilities for legislative limitation of the eligibility of political advocacy mail for reduced postal rates supported by appropriations under 39 U.S.C. § 2401(c). Apart from technical drafting problems, such legislation raises constitutional issues since it

-- affects political speech, a category of expression traditionally accorded formidable Bill of Rights protection; and
-- excludes defined subject categories of mail from a subsidy still available to other categories.

Some basic questions. Structurally speaking, the most fundamental question is whether organizations or mailings should be the focus of eligibility reduction. That is:

-- Should engaging in political advocacy mailings be grounds for ending the organization's entitlement to reduced rates? or
-- Should particular mailings be made ineligible for reduced rates on the basis of their political-advocacy content, without affecting the mailer's entitlement to use these rates for other mail?

For reasons developed below (pp. 7-9), we regard the latter model as the right one to follow. We do recognize that it may require more continuous policing by postal authorities; and we offer some suggestions for minimizing the effort and expense it would entail.

From the legal standpoint, we can proceed most easily by situating our problem on a number of conceptual axes corresponding to major constitutional themes. The extreme breadth of the relevant provisions -- essentially, the free speech guarantees of the First Amendment and the equal-protection aspect of the Fifth Amendment's Due Process clause -- make this a necessary procedure for constitutional analysis ex ante, as well as a common judicial approach. We will examine the general proposal from these points of view:

1. Deprivation, across the board, of a protected right vs. discrimination among groups supposedly equally protected. Are the significant constitutional problems the result of placing a restriction on everyone's ability to communicate political views? or of extending subsidy to some groups or viewpoints while taking it away from others? or of both?

2. Withdrawal of subsidy vs. imposition of a restriction. The conventional wisdom is that withdrawal of a government subsidy, even if used to further the exercise of a protected right, is not itself a denial of that right. But some programs conditioning a government benefit on avoidance of described political behavior have been struck down for that reason. Within the last few months, the Supreme Court has split over whether a state tax statute was a selective tax on part of the press or a selective subsidy to another part -- an interpretative disagreement leading to a 180° difference in constitutional result.

3. Nature of the political speech affected -- and of any countervailing governmental interest in regulating it. Despite the unqualified language of the First Amendment, some peripheral limitations even on political speech are allowed in practice. Here the precise scope of our hypothesized legislation will have a great deal to do with its constitutional soundness. A restriction applying only

to "lobbying," for example, may survive even if it would be invalid as applied to all forms of political speech.

4. Postal regulation vs. other types of regulation. It is a commonplace that, in Justice Holmes's words, the right to use the mails "is almost as much a part of free speech as the right to use our tongues." It is also clear that Congress has essentially plenary power to establish postal policy. Where on this axis are we to situate our present problem? And, in answering that question, how far can we rely on speech cases from nonpostal contexts?[1]

Finally, we will examine some possible legislative formats and point out their constitutional strengths or weaknesses.

Subsidies and rights. The most immediately evident constitutional feature of our problem is that it involves an explicit government subsidy.

It is often said that a constitutional right is not taken away just because the government refuses to support its exercise with a subsidy. Enacting a merely coercive rule forbidding a particular type of speech is much more dubious, from a First Amendment standpoint, than declining to subsidize that form of speech; and this can be true even if other forms are subsidized.

On the other hand, the mere presence of something the court is willing to label a "subsidy" is not the end of the inquiry. First, it may violate both First and Fifth Amendment principles to extend a subsidy to some viewpoints and withhold it from others. Two lower-court decisions, discussed below (pp. 13-18), apply this reasoning to the revenue-forgone subsidy itself.

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[1] In particular, we will be examining a number of tax cases; as the Commission's June 1986 Preferred Rate Study showed, much of the legal theory (and statutory law) defining the special status of nonprofit organizations has grown up in that area. But it is important to bear in mind the structural differences between these two pervasive governmental presences.

In addition, where withdrawal of the subsidy can be viewed as suppressive of free speech, the legislature may protect the intended limits of the subsidy but may not go further and penalize the nonsubsidized activity in general. This principle is illustrated by the leading recent case on the subsidy doctrine, Regan v. Taxation With Representation, 461 U.S. 540 (1983). Taxation With Representation (TWR) desired both to advocate its point of view before Congress, the Executive, and the courts, and to be tax-exempt and eligible for deductible contributions under § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)].[2] It sought a judgment that the Code's prohibition against a § 501(c)(3) entity carrying on substantial lobbying violated the First Amendment and the equal-protection aspect of the Fifth. The court of appeals agreed on the Fifth Amendment point; the Supreme Court reversed.

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The Court began with the proposition that

> Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions. . . . Congress chose not to subsidize lobbying as extensively as it chose to subsidize other activities that nonprofit organizations undertake to promote the public welfare.

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[2] Section 501(c)(3) makes ineligible an entity a "substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation." Section 501(c)(4) organizations are tax-exempt, and may lobby, but may not receive deductible contributions. A pair of organizations, one operating under each section, may work under common control for their joint charitable purposes. TWR itself had at one time maintained a dual organization, with both "(c)(3)" and "(c)(4)" entities, but at the time of litigation was a single unit.

461 U.S. at 544 (fn. omitted). TWR's First Amendment challenge rested on Speiser v. Randall, 357 U.S. 513 (1958), which invalidated a state rule requiring "anyone who sought to take advantage of a property tax exemption to sign a declaration stating that he did not advocate the forcible overthrow of the Government," 461 U.S. at 545. The rationale was that denying an otherwise available exemption to those who engaged in certain kinds of (political) speech in effect penalized them for it, and so violated the First Amendment.

Conceding that Congress could not penalize TWR for exercising its free-speech rights, the Court said it had not done so: it had merely declined to pay for that exercise out of the Treasury.

> It appears that TWR could still qualify for a tax exemption under § 501(c)(4). It also appears that TWR can obtain tax-deductible contributions for its nonlobbying activities by returning to the dual structure it used in the past, with a § 501(c)(3) organization for nonlobbying activities and a § 501(c)(4) organization for lobbying. TWR would, of course, have to ensure that the § 501(c)(3) organization did not subsidize the § 501(c)(4) organization; otherwise, public funds might be spent on an activity Congress chose not to subsidize.
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> * * * *
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> TWR is certainly correct when it states that we have held that the government may not deny a benefit to a person because he exercises a constitutional right. See Perry v. Sindermann, 408 U.S. 593, 597 (1972). But TWR is just as certainly incorrect when it claims that this case fits the Speiser-Perry model. The Code does not deny TWR the right to receive deductible contributions to support its nonlobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby. Congress has merely refused to pay for the lobbying out of public moneys. This Court has never held that Congress must grant a benefit such as TWR claims here to a person who wishes to exercise a constitutional right.

461 U.S. at 544-545 (fn. omitted).

Justice Rehnquist's majority opinion, from which these quotations come, relies mainly on the Cammarano rule[3] that Congress need not subsidize the exercise of constitutional rights. But three concurring Justices found the constitutionality of the Code section saved only by the feasibility of a (c)(3)-(c)(4) consortium like that described in fn. 2, supra:

> If viewed in isolation, the lobbying restriction contained in § 501(c)(3) violates the principle, reaffirmed today, ante, at 545, "that the government may not deny a benefit to a person because he exercises a constitutional right." Section 501(c)(3) does not merely deny a subsidy for lobbying activities, . . . it deprives an otherwise eligible organization of its tax-exempt status and its eligibility to receive tax-deductible contributions for all its activities, whenever one of those activities is "substantial lobbying." Because lobbying is protected by the First Amendment, . . . § 501(c)(3) therefore denies a significant benefit to organizations choosing to exercise their constitutional rights.
>
> The constitutional defect that would inhere in § 501(c)(3) alone is avoided by § 501(c)(4). . . .
>
> Given this relationship between § 501(c)(3) and § 501(c)(4), the Court finds that Congress' purpose in imposing the lobbying restriction was merely to ensure that "no tax-deductible contributions are used to pay for substantial lobbying." . . . Consistent with that purpose, "[t]he IRS apparently requires only that the two groups be separately incorporated and keep records adquate to show that tax-deductible contributions are not used to pay for lobbying." Ante, at 545, n. 6. As long as the IRS goes no further than this, we perhaps can safely say that "[t]he Code does not deny TWR the right to receive deductible contributions to support its nonlobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby." Ante, at 545. A § 501(c)(3) organization's right to speak is not infringed, because it is free to make known its views on legislation through its § 501(c)(4)

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[3] Cammarano v. United States, 358 U.S. 498 (1959).

> affiliate without losing tax benefits for its nonlobbying activities.
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> Any significant restriction on this channel of communication, however, would negate the saving effect of § 501(c)(4). . . .

461 U.S. at 552-553 (fn. omitted) (Blackmun, J.).

The same approach was taken in FCC v. League of Women Voters of California, 468 U.S. 364, 399-401 (1984). There the Court invalidated § 399 of the Public Broadcasting Act, which forbade any editorializing by a station receiving public broadcasting grants. It distinguished TWR, pointing out that the broadcasting provision did not permit division into qualifying and nonqualifying segments, but suggesting that if it did it might survive review.

Underlying this analysis is the idea that Congress may prevent a subsidy it grants from being used for a purpose it does not want to subsidize -- but if the purpose is constitutionally protected, it cannot go beyond that narrow policing function.[4] To limit or burden activities other than the one Congress decided not to subsidize, or to limit that one in ways other than insuring it does not receive subsidy, risks violating the First Amendment.

The TWR decision applied to the structure of reduced-rate eligibility limitation. This general principle answers the structural question raised on page 1, supra: Should limitations on political advocacy apply to organizations, or only to mailings?

If Congress were, for example, to make nonprofit organizations that use the mails to engage in lobbying ineligible for nonprofit mailing permits, we would have the situation condemned implicitly in the majority opinion in TWR, and explicitly in the concurrence. Political speech would be penalized, in that no otherwise eligible mail of the organization

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[4] A somewhat similar idea appears in Harris v. McRae, 448 U.S. 297, 317, fn. 19 (1980).

could be sent at reduced rates -- whether or not it contained lobbying material. Congress would have gone beyond insuring that the postal subsidy was not expended on lobbying. On the view expressed or implied in TWR, it would be punishing nonprofit organizations for engaging in (constitutionally-protected) lobbying by taking away the reduced-rate eligibility they would otherwise enjoy. Merely arguing that the reduced rate is a subsidy that Congress may withhold from lobbying activity would not save the provision, once it was shown that Congress had, in the process, also penalized the nonlobbying activities of the organization in question.

Thus any restriction on nonprofit eligibility should apply to mailings. This approach implies something like the dual structure invoked in TWR. An organization intending to engage in the political activity Congress chose not to subsidize could be required to take out two permits: one for use with the reduced rates (for nonpolitical mail), and one merely to identify it as an otherwise eligible nonprofit entity that on this occasion was sending ineligible mail.[5] Of course it would also be possible for organizations to subdivide themselves, as the TWR court suggested. But in the tax situation, it can be presumed that an organization has only one income, and that a deducted contribution can seldom if ever be traced to a particular activity. Keeping eligible and noneligible activities separate, for tax purposes, effectively requires separate organizations. Postage, on the other hand, is assessed and charged on a per-mailing basis. There is no reason to require the mailer to

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[5] Theoretically, even a second nonprofit permit would not be necessary. The organization could simply acquire a regular-rate permit or (for second-class matter) establish regular-rate entry. We suggest the special form of permit on the assumption that disputes may arise as to whether a particular mailing is "political"; having it entered under a permit that established its potential eligibility for reduced rates (should the dispute be resolved in the mailer's favor) would flag the importance of its content, and so allow such questions to be decided conveniently.

divide itself into eligible and noneligible components, when the distinction can just as well be drawn between eligible and ineligible mailings.

From this point on, therefore, we will assume that mailings and not mailing organizations are the focus of any eligibility restriction we examine.

Substantive aspects of the subsidy/right problem. Aside from the structural question just dealt with, distinguishing between an unconstitutional penalty on free expression and a legitimate limitation of governmental subsidy presents substantive difficulties. One of these is illustrated by a recent case in which a divided Supreme Court invalidated a state taxation statute. The distinction just suggested was the crux of the disagreement.

Arkansas Writers' Project v. Ragland, ___ U.S. ___, 55 USLW 4522 (April 22, 1987), involved an Arkansas statute exempting from gross receipts tax all newspapers and "religious, professional, trade and sports journals and/or publications printed and published within this State" [55 USLW at 4522, quoting Ark. Stat. Ann. §84-1904(j)]. A general-interest magazine, held by the Arkansas courts not to qualify for the exemption, attacked the provision on First Amendment grounds.

The Court invalidated it, relying mainly on Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983) (overturning ink-and-newsprint tax which exempted first $100,000 and so reached only a few large papers). In Arkansas Writers' Project, the main question was whether a particular group within the press as a whole was singled out for taxation. The Court said:

> . . . Because the Arkansas sales tax scheme treats some magazines less favorably than others, it suffers from the second type of discrimination identified in Minneapolis Star.
>
> Indeed, this case involves a more disturbing use of selective taxation than Minneapolis Star, because the basis on which Arkansas differentiates

> between magazines is particularly repugnant to First Amendment principles: a magazine's tax status depends entirely on its content. . . .

55 USLW at 4524. The Court went on to hold that the tax was not constitutional just because it did not discriminate among viewpoints: prohibiting any discussion of a particular topic is as objectionable as prohibiting the expression of one set of opinions about it. Ibid.

The majority treated the case as involving a selective tax on one segment of the press. The two dissenters, on the other hand, took it to be a selective subsidy for the other segment. Justice Scalia starts from this postulate, and from a basic disagreement with Minneapolis Star insofar as it made

> . . . application of the "strict scrutiny" test rest[ ] upon the premise that for First Amendment purposes denial of exemption from taxation is equivalent to regulation.

55 USLW at 4526. On that basis, his dissent argues that Cammarano and TWR support Arkansas's decision not to subsidize all magazines through its tax system.[6] The dissent concedes:

> Perhaps a more stringent, prophylactic rule is appropriate, and can consistently be applied, when the subsidy pertains to the expression of a particular viewpoint on a matter of political concern -- a tax exemption, for example, that is expressly available only to publications that take a particular point of view on a controversial issue of foreign policy. Political speech has been accorded special protection elsewhere. . . . There is no need, however, and it is realistically quite impossible, to extend to all speech the same

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[6] The dissent argues that such a scheme would pass the conventional test under the Equal Protection clause of the Fourteenth Amendment: a rational basis in legitimate state purpose, and a method reasonably related to its achievement. 55 USLW at 4526. This, of course, would dispose of the argument that the state has no business selectively helping some forms of expression; and the same rationale would apply under the Fifth Amendment's equal-protection component.

> degree of protection against exclusion from a subsidy that one might think appropriate for opposing shades of political opinion.
>
> By seeking to do so, the majority casts doubt upon a wide variety of tax preferences and subsidies that draw distinctions based upon subject-matter. The U.S. Postal Service, for example, grants a special bulk rate to written material disseminated by certain nonprofit organizations -- religious, educational, scientific, philanthropic, agricultural, labor, veterans', and fraternal organizations. . . . Must this preference be justified by a "compelling governmental need" because a nonprofit organization devoted to some other purpose -- dissemination of information about boxing, for example -- does not receive the special rate?

Ibid. These contrasting approaches focus the present inquiry: Is a decision to withdraw nonprofit rate eligibility from political-advocacy mail a decision not to subsidize political expression? Or is it a decision to impose a financial penalty on such expression? If it is the former, we can predict that a court would uphold it against First Amendment challenges; if the latter, we can predict the reverse.

Arguments in favor of constitutionality. Perhaps the most appealing argument is that the reduced rate is a subsidy in a more obvious and literal sense than are the "subsidies" involved in other cases. A tax exemption is labeled a subsidy not necessarily because courts think of it as a grant back of money the government has a right to keep, but simply because of its practical effect and the fact that the legislature is not obliged to extend it.[7] For constitutional purposes, the economic effect of the exemption is not necessarily controlling. Selectively denying a tax exemption thus can reasonably be equated with

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[7] See Regan v. Taxation With Representation, 461 U.S. at 544, especially fn. 5. Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970), cited there, offers an elaborate historical argument to show that tax exemption for church realty does not equate to state sponsorship of religion -- such as might be evidenced, for example, by a cash subsidy.

selective taxation. That appears to be what the majority did in Arkansas Writers' Project.

Similarly, a tax is not merely an economic transaction; it can be and often is viewed as a disciplinary measure. Certainly the Court in Arkansas Writers' Project entertained that view: it drew an analogy with cases where simple, coercive restrictions were imposed on speech, such as Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972), involving an ordinance barring non-labor-related picketing within 150 feet of a school. The general idea is at least as old as Chief Justice Marshall's famous observation that "the power to tax involves the power to destroy".[8]

By contrast, a reduced postage rate cannot well be regarded as anything but a gift from the government. The eligible nonprofit mailer is sold postal services for less than the same services are sold to the general public. Charging for postal services is not a tax, since (i) consumption of such services is, to a large degree, optional; and (ii) the purchaser receives benefits from the government proportionate to the money paid in. Since the postage transaction bears little resemblance to a tax, it is easy to argue that a reduction in postage for some categories of user is more purely a subsidy than is a tax exemption; it is therefore more fully subject to Congressional discretion; and in particular, its partial withdrawal is not tantamount to a selective tax or penalty on those affected.

This analysis is fortified by the fact that, unlike the revenue lost to the treasury through tax exemptions, the revenue forgone by the Postal Service is explicitly provided by appropriations. When Congress decides, annually, whether and to what extent it will fund the revenue forgone mechanism, it is plainly deciding about a subsidy in the classical (and not merely the economic) sense.[9]

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[8] McCulloch v. Maryland, 4 Wheat. 316, 431 (1819).

[9] See Justice Harlan's concurring opinion in Walz, supra, 397

Fn. Cont'd.

Because all these considerations tend to show that reduced postal rates are more like explicit subsidies than like the tax exemption examined in Arkansas Writers' Project, they support the view that Congress may withdraw it from some users without violating the Constitution.

Arguments against constitutionality. Someone concerned to support the opposite view would begin by pointing out that not even a "pure" subsidy can be administered without regard to constitutional limitations. Tending to confirm this view are two lower-court cases in which partial withdrawals of eligibility for reduced rates were struck down.

Greenberg v. Bolger, 497 F. Supp. 756 (E.D. N.Y. 1980) dealt with the limitation of reduced-rate eligibility to "major" parties. Imposed by an appropriations act (Pub. L. 96-74, 93 Stat. 562), this limitation effectively confined eligibility to the Democratic and Republican Parties, and so was challenged by a group of "third" and "minor" parties.

Though explicit subsidization of some types of mail in an environment where others must pay their attributable costs plus a share of institutional costs dates only from Reorganization, the court treated earlier cases as relevant: they established the

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U.S. at 699:

> . . . I agree . . . that exemptions do not differ from subsidies as an economic matter. Aside from the long tradition behind exemptions there are other differences, however. Subsidies, unlike exemptions, must be passed on periodically and thus invite more political controversy than exemptions. Moreover, subsidies or direct aid, as a general rule, are granted on the basis of enumerated and more complicated qualifications and frequently involve the state in administration to a higher degree . . . .

The discussion was in the context of establishment of religion, and Justice Harlan was concerned to show that while a subsidy might excessively involve the state with religion, an exemption would not do so. For our purposes, the important point is his recognition that even though the financial bottom line may be similar (for the recipient), explicit subsidy and tax exemption are different mechanisms.

importance of the mails to First Amendment interests. "Mr. Justice Holmes," the court said,

> eloquently explained the relation of access to the mails and the first amendment when he wrote: "The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues . . . ." United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407, 437 . . . (1921) (Holmes, J., dissenting and concurring with Brandeis, J., dissenting).

497 F. Sup. at 774. Having established this mail-speech equivalence, the court distinguished Buckley v. Valeo, 424 U.S. 1 (1976), relied on by the government to demonstrate the validity of promoting "important parties." It held that, unlike the funding in Buckley,

> . . . the appropriation in the instant case is a direct subsidy of the mailing costs of the selected parties. A denial of this subsidy is, unlike the result in Buckley, content-based censorship in violation of the first amendment.

497 F. Supp. at 775. The Campaign Fund Act provisions upheld in Buckley provided generalized support for the major political parties, and there was no indication that it would enable them to corner communication resources to the exclusion of smaller, nonqualifying rivals. The Greenberg court thus read Buckley as an instance of Congress's constitutional discretion to subsidize or not, without creating a First Amendment cause of action on the part of nonrecipients.

But if our earlier analysis is sound, how could the court have arrived at a different view of the postal subsidy? It also appeared to be a discretionary governmental benefit.

The answer appears to be that the provision condemned in Greenberg discriminated among political viewpoints. In declaring it "content-based censorship" (497 F. Supp. at 775), the court

viewed it as a selective penalty on expression. It found content-based selectivity in the circumstance that third parties were denied the opportunity to compete, on an equal footing, with major parties because of the greater platform (content) popularity of the latter. 497 F. Supp. at 776.

Thus the court paid less attention to positioning its problem on the subsidy/right axis discussed above than to its proper treatment from the equality point of view. In effect, the court may be thought of as reasoning that even when its discretion -- as a general matter -- is very broad, as in dealing with a genuine subsidy, the legislature may not extend or withhold the subsidy in a substantially discriminatory way. The decision concludes that third parties have a significant or potentially significant part in the political system (497 F. Supp. at 769 ff.) and describes the difficulties they face in attracting support. It concludes that in view of the latter,

> . . . the ability of third parties and independent candidates to communicate their ideas, recruit new members and solicit funds is directly affected by their access to the mails. Any statutory inhibition on this use would necessarily jeopardize their effectiveness and, perhaps, their very existence. Given the long history of animosity towards factions and the obvious self-interest members of Congress have in handicapping third parties and independent candidates, government regulations that burden the efforts of such parties or candidates demand close examination.

497 F. Supp. at 772. By analogizing the situation to the Milwaukee Social Democratic case, and adopting the now generally-accepted dissents of Justices Holmes and Brandeis as good law, the court made it clear that

> . . . the government has chosen to benefit those with popular views and burden those with unpopular views. To handicap the mailing of campaign literature because a political party has not achieved a required level of acceptance is not

> different from censoring speech because of its substance. . . .

497 F. Supp. at 776. And finally,

> To suggest that the benefit granted the major parties is acceptable because it only creates a relative impediment to "new" parties ignores the reality that in a competitive intellectual environment assistance to one competitior is necessarily a relative burden to the other. . . . The 1980 Act creates a burden on access to precious mail services for some kinds of ideas and it is a constitutionally impermissible restriction on the first amendment rights of "new" parties.

497 F. Supp. at 778.

Thus it is clear that in some cases the withdrawal of a direct subsidy may be so discriminatory[10] in its effect on free expression as to overshadow the principle that taking away a subsidy does not deny a right. And this is true even when the discrimination is less obvious than it was in Greenberg.

Thus, in Spencer v. U.S. Postal Service, 613 F. Supp. 990 (S.D. Ohio 1985), the issue was whether the plaintiff Charter Committee of Greater Cincinnati, a local political party, could be denied advantageous rates because its ideology excluded affiliation with a state committee. Without such a statewide organization, it could not qualify as a "political committee" under 39 U.S.C. § 3626(e), and thus could not claim entitlement to the lower rates.

Initially, the court cited Greenberg for the general rule that regulation of the mails encompasses regulation of expression. 613 F. Supp. at 991. Because its ideology precluded satisfaction of the statutory condition that would qualify it for

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[10] It is worth noting that while such issues are often cast in Fifth Amendment (equal protection) terms, the Greenberg court recognized that improper selectivity could violate the First Amendment too. See especially 497 F. Supp. at 777.

nonprofit rates, the court concluded that Charter Committee's First Amendment rights were infringed:

> Perhaps on the surface it appears that the Postal Service simply is distinguishing between state committee affiliates and Charter because the former met a condition that the latter does not. Critically, though, that "condition" goes to the heart of the reason why Charter was founded -- that is, to shun statewide affinity and promote a local focus. We are confronted . . . with a group that was denied a mailing privilege solely because its precepts preclude it establishing a statewide network. That denial is an affront to Charter's first amendment rights.

613 F. Supp. at 993. As was the case in Greenberg, the Spencer court indicated its willingness to look beyond the more patent legislative purpose to the practical constitutional effects of the statute. Indeed, one clear teaching of both cases is that we cannot stop with facial legislative intent: in neither was a content-based distinction of constitutional significance explicitly enacted by Congress. Yet in both, the discrimination was found, by the courts, to be the necessary effect of the law.

Unlike Judge Weinstein in Greenberg, Judge Spiegel had to deal with the TWR opinion (issued in 1983). What was implicit in the earlier nonprofit-rate case was brought out plainly five years later:

> Defendant counters that plaintiffs' first amendment rights have not been abridged by virtue of Charter's ineligibility to mail its materials at the special rate. On the authority of Regan v. Taxations with Representation of Washington (TWR), 461 U.S. 540, 103 S. Ct. 1997, 76 L.Ed.2d 129 (1983), defendant maintains that the Constitution is not offended simply because Congress declines to subsidize an organization's exercise of its first amendment rights. . . .

613 F. Supp. at 992. But the court distinguished TWR, pointing out that

> . . . the cause now before us poses questions dissimilar from those raised in TWR. The government's reason behind the subsidy denial had neither the purpose nor -- more importantly -- the effect of treating the entity TWR differently because of its founding tenets. Rather, all lobbying groups, regardless of the causes championed, were ineligible for subsidy. See TWR, 461 U.S. at 544, 103 S. Ct. at 2000. While some "subsidy" accrues in connection with allowance of the special mailing rate, under these facts, the commands of the first amendment should not be viewed without force or effect.

613 F. Supp. at 993, fn. 3; and see the similar analysis Judge Spiegel employed in the preliminary injunction phase of the same case [Spencer v. Herdesty, 571 F. Supp. 444, 450-453 (S.D. Ohio 1983)].

It seems clear, therefore, that the postal subsidy (for political speech at any rate) cannot be mechanically pigeonholed under "TWR-Cammarano". There is a strong possibility that those deprived of it would mount a constitutional attack on the limitation; and that if they could show a differential effect they might prevail.

Viewpoint discrimination. Reconciling the results in Greenberg and Spencer with the no-right-to-subsidy principle of TWR and Cammarano requires us to recognize the importance of viewpoint discrimination -- whether or not it was intended by Congress.[11] If the limitations imposed on reduced-rate eligibility had been truly content-neutral, they might well have survived review. It is true that the courts -- the Spencer court

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[11] Cf. the Supreme Court's warning in Buckley v. Valeo that strict scrutiny is appropriate

> even if any deterrent effect on the exercise of First Amendment rights arises, not through direct Government action, but indirectly as an unintended but inevitable result of the Government's conduct . . . .

424 U.S. at 65.

in particular -- were not at all reluctant to find viewpoint discrimination as an unintended effect of the legislation. In the inherently competitive political area, this is perhaps inevitable:

> . . . As the statute is applied in Cincinnati, however, its effect is to enhance the ability of certain candidates to communicate with the voters while not permitting all candidates that same opportunity. . . . At this stage we cannot conceive of a governmental interest so substantial that it would overcome this effect.
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> We emphasize that Congress may well have had a legitimate purpose in enacting § 3626. Nonetheless, the effect of this statute as applied in Cincinnati seems to be to provide a benefit to candidates affiliated with state political parties but to deny that benefit to candidates associated with Charter. Although defendants case the issue in terms of subsidies, we think the terminology is misleading. . . . [O]f course, § 3626 creates a subsidy. But that is only the beginning of the inquiry. We conclude that plaintiffs have demonstrated a strong probability that they can succeed on the merits of their claim that § 3626 either discriminates on the basis of content, or, even if content-neutral, impermissibly restricts the flow of information.

Spencer v. Herdesty, 571 F. Supp. at 453. In this connection, the Spencer cases present a more interesting scenario since, as the court conceded, the statutory provision was "facially content-neutral." Id. at 451. And the Spencer court was also more explicit about the independent First Amendment basis of its findings, noting that

> . . . Because we find a strong likelihood that plaintiffs will succeed on the merits of their First Amendment claim, we find it unnecessary to discuss the equal protection aspect of their claim at this point.

Ibid.; and see 613 F. Supp. at 994. When a fundamental First Amendment right is involved, a distinction like that between

statewide and local parties cannot be defended simply because it has a "rational basis" -- the normal standard for equal-protection inquiry. Thus the two postal cases occupy a middle ground between the situation where denial of a subsidy does not selectively impinge on anyone's free-speech rights (as in TWR), and that in which no fundamental rights are involved and a rule treating different groups unequally will be upheld if it has a rational basis and is reasonably adapted to its purpose.

Achieving content neutrality. If legislation can be drafted which avoids any favoring (however inadvertent) of particular viewpoints, it may be treated as a legitimate withholding of subsidy from, rather than a penalty on, political expression. Arkansas Writers' Project suggests that merely avoiding preference for one viewpoint may not be enough, since the majority found preventing all discussion of a subject area as bad as suppressing a particular point of view. But at least that degree of neutrality is an indispensible minimum.

At the textual level, neutrality can be pursued by making the entire class of potentially eligible mailers subject to precisely the same limitations. For example, if eligibility for political advocacy mailings were denied to labor organizations but left in place for agricultural organizations, it would not be difficult for a court to find a Spencer-type deprivation: suppose the political issue on which both sorts of entities wished to express themselves were a trade bill that would help farmers but harm industrial workers. To say that all labor organizations were forbidden to send reduced-rate mailings on this issue would not show that the legislation did not favor one interest at the other's expense.[12] A judge would probably conclude that the entire subclass (of labor organizations) would in the nature of the case have a common viewpoint, and that this viewpoint was being improperly burdened.

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[12] Cf. Anatole France, Le Lys rouge: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges . . . . "

This suggests rather clearly that all potentially eligible organizations should be subject to the same limits.

Not so clear, however, is the effect of the suggestion -- mentioned above in connection with Arkansas Writers' Project -- that barring all discussion of a topic is equally unconstitutional. Does this mean that even universal denial of the subsidy to political mailings -- simply because they are political -- is impermissible?

Rules against discussion of a subject. The Supreme Court's chief authority for this proposition was Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980). It involved a New York PSC order forbidding a utility to place material expressing views (its own or its opponents') on public policy issues in its billing envelopes. New York defended, in part, on the ground that

> . . . it applies to all discussion of nuclear power, whether pro or con, in bill inserts. The prohibition, the Commission contends, is related to subject matter rather than to the views of a particular speaker. Because the regulation does not favor either side of a political controversy, the Commission asserts that it does not unconstitutionally suppress freedom of speech.

447 U.S. at 537. The Court was not persuaded:

> The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Department of Chicago v. Mosley, [408 U.S.] at 95 . . . . In Mosley, we held that a municipality could not exempt labor picketing from a general prohibition on picketing at a school even though the ban would have reached both pro- and anti-union demonstrations. If the marketplace of ideas is to remain free and open, governments must not be allowed to choose "which issues are worth discussing or debating . . . . " 408 U.S. at

> 96. . . . To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.

408 U.S. at 537-538. Considered apart from their statutory or regulatory context, Consolidated Edison and Mosley might suggest danger even in taking away the subsidy, as neutrally as possible, from all political advocacy by nonprofit mailers.

However, as we move farther from the danger of preferring one interest or viewpoint over another, the subsidization/free exercise polarity resumes a greater role. The two cases just cited involved merely coercive rules forbidding some kinds of speech. What struck the Court as most significant was the attempt first to exercise state authority to prohibit discussion or expression, and secondly to defend that exercise by pointing out that everyone was equally harmed by it. There was no possibility of arguing, on behalf of Chicago or the New York Commission, that the rules simply limited the range of official largess.[13]

Because the reduced rates are a genuine subsidy, even the courts that have invalidated limitations on their scope have done so because of apparent viewpoint discrimination. Spencer, in particular, suggests clearly that if there were no political parties whose viewpoint included or depended on localism, the apparent content-neutrality of the statute might have saved it.

Partial summary. In short, the considerations raised so far indicate:

1. It can reasonably be argued that reduced rates are a genuine subsidy. The general principle that withholding a subsidy does not deny a constitutional right, even if the subsidy

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13 Arkansas Writers' Project is more problematical; as we saw (pp. 9-11), the majority thought the law was a selective tax and the dissenters a (legitimately) selective subsidy of those not taxed. But for reasons discussed at pp. 11-13, supra, our situation is more clearly a subsidy than the tax exemptions at issue in that case or in TWR.

would facilitate its exercise, seems likely to apply to them as an abstract matter. (But the legislature must be careful to do no more than regulate the subsidy; it cannot go farther and interfere with activities other than the one it does not want to subsidize.)

2. But not even this general principle will save a restriction on speech brought about by removing a subsidy if the effect of the removal is to discriminate among viewpoints. This suggests that all potentially eligible groups should be similarly restricted.

3. Even that precaution, however, does not guarantee success; the idea that restricting any discussion of a topic (in our case, restricting any political advocacy) is constitutionally objectionable must still be dealt with. Here we would -- at least on the strength of the principles discussed so far -- be forced to rely on the "subsidy" argument derived from TWR and Cammarano.

Burdened speech and governmental interest. Up to now we have concentrated on the first two polarities sketched at pp. 2-3, supra: The questions of viewpoint discrimination versus across-the-board restriction, and of deprivation of subsidy versus denial of a protected freedom. The precise reasons for wanting to restrict (subsidization of) political speech, and the precise subtypes of speech that might be restricted (desubsidized) have been left to one side. These issues also have constitutional implications.

What kind of speech? The nature of the speech regulated is one significant determinant of the regulation's validity. Courts have recognized that some communicative activities are not "pure" speech but have nonspeech elements as well. Burning a draft card as symbol of political protest may be prosecuted [United States v. O'Brien, 391 U.S. 367 (1968)] because it has important nonspeech components which the government has a legitimate interest in controlling; that interest is unconnected with suppressing free expression; and the regulatory means is no broader than absolutely necessary in its incidental effect on

free speech. The Supreme Court has placed the sending of a telegram to a public officer on the "pure speech" side of the line. Cox v. Louisiana, 379 U.S. 559 (1965).[14] Presumably it would treat political advocacy mail in the same way. That postal communication on any large scale involves substantial expenditures would not imply that it is not "pure" speech. Buckley v. Valeo, 424 U.S. 1, 16-17 (1976); and see Greenberg v. Bolger, supra, 497 F. Supp. at 774-775. Thus we can put aside the possibility that there are nonspeech elements in political advocacy mail that may be regulated in ways that excusably impinge on First Amendment rights.

Another "nature-of-speech" question is whether a public forum is involved:

> . . . classification of an activity, facility, place or service as a "public forum" requires that government regulation must be both content-neutral and narrowly drawn so as to serve significant governmental interests. . . . It is only "once the restrictions are found to be content-neutral, and it is determined that alternative avenues of communication are available" that the question becomes one of balancing the first amendment rights with the governmental interests. See Concerned Jewish Youth v. McGuire, 621 F.2d 471, 473 (2d Cir. 1980).

Greenberg, 497 F. Supp. at 777. It seems clear that the postal system is a public forum. Id., at 776; Rowan v. U.S. Post Office Department, 397 U.S. 728 (1970). As such, the right to use it cannot be taken away unless the restriction

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[14] Cox and kindred cases allow reasonable and nondiscriminatory "time, place, and manner" restrictions on speech when necessary to further an important government interest not related to suppression of communication. The problem we are addressing is different, and broader; a rule that the nonprofit rate might not be used for political mailings within X days of an election, on the other hand, might be characterized as a time, place, and manner limitation -- provided that a significant, non-speech-related governmental interest were advanced to justify it.

> . . . satisf[ies] three criteria: (1) it must be content-neutral; (2) it must serve a significant government interest, and (3) it must leave open ample alternative channels for communication of the information.

U.S. Postal Service v. Hustler Magazine, Inc., 630 F. Supp. 867, 873 (D.D.C. 1986). The problem of achieving content neutrality was discussed above. Of the remaining problems, we will tackle the less complicated one first.

Does denial of the subsidy leave alternative channels? Unlike the §3008 prohibitory order at issue in Hustler Magazine, withholding subsidized rate eligibility from political advocacy material would still allow nonprofit organizations to mail it, though at regular rates. Prima facie, therefore, it would seem not only that an alternative channel would remain, but that it would differ in only one respect -- cost per letter -- from the channel of choice.

In upholding the denial of (tax) subsidy for lobbying activities, the TWR court had no difficulty with the alternative provided by § 501(c)(4) organization -- even though a nonprofit body organized under that provision must do without deductible contributions. The tax invalidated in Arkansas Writers' Project likewise had a financial effect, it is true; but that case rested on lack of content neutrality, not on lack of alternative channels, a question the Court did not reach.

At this point the analysis ties back to our first approach. Even if a nonprofit is hindered to some degree by ineligibility for reduced rates, the sole source of the advantage it must do without was an explicit government subsidy. Again assuming content-neutrality, it seems likely that the continued availability of regular-rate subclasses would be found to provide an adequate alternative when the very existence of the preferred channel is a matter of legislative discretion.

The governmental interest: Budget concerns. Continuing on the assumption that eliminating eligibility for political-advocacy mailings would be evaluated as a restriction on use of

a public forum (albeit a content-neutral one that left adequate alternative channels), what government interest is it designed to serve?

An obvious candidate is the need for economy. This would be accepted as a legitimate discretionary judgment by Congress, in the absence of constitutional problems; the difficulty is whether in the face of a First Amendment challenge a decision to eliminate subsidy for political mailings can be defended on budgetary grounds. Arguably, much more could be saved by eliminating all revenue-forgone subsidies (e.g., as suggested by the Commission's June 1986 report). That a Congress concerned about economy chose to cut only the $NN million for political advocacy from a total revenue-forgone item of $NNN million might suggest less concern for economy than for political quietude. Unfortunately, this can only be flagged as a danger; it does not lend itself to precise assessment. It is difficult to predict how much interest a court will take in the "true" reasons underlying challenged legislation, much less what result it is likely to reach.[15]

There is some guidance in the cases on the general question of government economy as a justification for restricting free expression. Greenberg observes that

> While it is true that first amendment rights, though quite broad, may bow to other fundamental interests . . . under appropriate circumstances . . . the preservation of scarce financial resources has not provided a rationale for government activity that favors certain persons or groups and disfavors others on the basis of the content of the speech or the popularity of the speaker.

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[15] The competing exercises in hermeneutics by Justices Brennan and Scalia in the recent Louisiana "creationism" case [Edwards v. Aguillard, ___ U.S. ___, 55 USLW 4860 (June 19, 1987)] show what remarkably disparate conclusions about legislative purpose can be drawn from the same legislative history.

> The fact that the government seeks to limit expenditures does not in this instance justify the denial of the constitutional right to express ideas different from that espoused by the majority. . . .

497 F. Supp. at 776; and see id. at 781, where it is observed that if money is scarce "the degree of subsidy to the two major parties can readily be reduced so that all political mailings are charged equally."

This is of limited assistance, since direct viewpoint discrimination is difficult to justify on the basis of any governmental interest. Buckley v. Valeo, 424 U.S. 1, 96 (1976), on the other hand, indicates that considerations of economy may help justify treating candidates differently for public campaign funding purposes: Congress should not be asked to waste money on hopeless candidates. We saw above that the Greenberg court did not consider the statutory scheme at issue in Buckley enough like the reduced postal rates to make it a defense for the exclusion of small parties. Asked for a schematic reason, we might say that the public financing subsidy was an initial government venture into an area previously left to private hands and pocketbooks; the withdrawal of subsidy from minor parties (Greenberg) or local ones (Spencer) selectively penalized members of a previously subsidized category.[16]

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[16] Cf. Justice Holmes's suggestion, in dissent, in Leach v. Carlile, 258 U.S. 138, 141 (1922), that

> . . . if the Government chose to offer a means of transportation [of letters] which it was not bound to offer it could choose what it would transport; which is well enough when neither law nor the habit that the Government's action has generated has made that means the only one. But when habit and law combine to exclude every other it seems to me that the First Amendment in terms forbids such control of the post as was exercised here.

There is a rather full discussion of the constitutional differences between "[l]osing a benefit previously provided . . . [and] simply never having been provided the benefit in the first place" in Kreimer, "Allocational Sanctions: The Problem of

Fn. Cont'd.

Assuming content-neutral withdrawal of the subsidy, however, can we say that the budgetary interest alone is sufficient to justify any restriction on political speech?

Some indication that we could appears in FCC v. League of Women Voters of California, 468 U.S. 364, 399-401 (1984). As noted above, the Court there invalidated a prohibition against editorializing by public broadcasting stations receiving federal subsidies. After rejecting the government's TWR-based "spending power" argument, the Court continues:

> . . . if Congress were to adopt a revised version of § 399 that permitted noncommercial educational broadcasting stations to establish "affiliate" organizations which could then use the station's facilities to editorialize with nonfederal funds, such a statutory mechanism would plainly be valid under the reasoning of Taxation With Representation. Under such a statute, public broadcasting stations would be free . . . to make known its views on matters of public importance through its nonfederally funded, editorializing affiliate without losing federal grants for its noneditorializing broadcast activities. . . . But in the absence of such authority, we must reject the Government's contention that our decision in Taxation With Representation is controlling here.

468 U.S. at 400-401 (fn. omitted). Justice Rehnquist's dissent argues that in "economic reality" an unrestricted CPB grant may support a great variety of station activities. Hence,

> . . . Given the impossibility of compartmentalizing programming expenses in any meaningful way, it seems clear to me that the only effective means for preventing the use of public moneys to subsidize the airing of management's views is for Congress to ban a subsidized station from all on-the-air editorializing. . . .

Negative Rights in a Positive State," 132 U. Pa. L. Rev. 1293, 1359 ff. (1984). Kreimer suggests using this intuitive difference as one baseline for evaluating government action that denies or takes away a subsidy or benefit (as opposed to inflicting a penalty).

468 U.S. at 406-407. It seems to be common ground that if it were possible to isolate the targeted form of speech from the generalized subsidy, it would be legitimate to do so. As we observed above (pp. 8-9), this is relatively easy in our case, since the subsidy is administered through rates paid at the time each mailing is deposited.

It seems to follow that, given content neutrality and adequate alternatives, we can also use the discretion of Congress to restrict and redirect spending as a significant government interest. But it must be demonstrable that only the use of subsidy money for ineligible purposes is affected, and that we are not more broadly penalizing organizations because they engage in political advocacy.

Generalized political expression vs. lobbying. To this point, we have treated all forms of political advocacy as interchangeable. It is not unlikely that a budget-based decision to discontinue subsidy for political advocacy mail, on a content-neutral basis and without the kind of overbreadth condemned in League of Women Voters, would survive review. But we should also see whether restricting the types of political expression to be desubsidized would make the constitutional viability of the project clearer still. We can approach this by considering whether a stronger governmental interest can be found in desubsidizing certain forms of political advocacy.

The most obvious candidate is a traditionally regulated form: lobbying. Nonprofits' lobbying has been subjected to specialized tax treatment for some time; and while current efforts by the IRS to stiffen its regulations are meeting with resistance, the constitutional propriety of limiting tax exemption for lobbying is now beyond question. Because of this, and because the Internal Revenue Code definition of lobbying is broad enough to encompass many of the activities with which this study deals, the possibility of an amendment limited to lobbying is worth pursuing separately.

Grassroots lobbying. The Code treats efforts to mobilize popular pressure on the legislature in much the same way as

efforts by the lobbying organization to exert that influence directly. This appears particularly clearly in the provisions governing "§ 501(h)" organizations -- those which elect to become eligible to do some lobbying, but subject to an excise tax and loss of exemption if they exceed a prescribed limit.

Section 4911 of the Code imposes a 25% excise tax on excess lobbying expenditures of a § 501(h) organization. "Excess lobbying expenditures" means the greater of (i) the excess of lobbying expenditures over the lobbying nontaxable amount, or (ii) the excess of grass roots expenditures over the grass roots nontaxable amount. Both lobbying and grass roots activities are considered ways of influencing legislation; which in turn means:

> (A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and
>
> (B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

26 U.S.C. § 4911(d).[17] Not only does this statutory scheme deny the "subsidy" of tax exemption to organizations that overindulge in grass roots lobbying, on the same terms that it denies exemption to those whose "traditional" lobbying is excessive, but it attaches the same tax to both forms of overage. Whatever might be thought of it as an enforcement device backing up the expenditure limits, the excise tax cannot be directly justified

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[17] There are some significant exceptions to the definition of "influencing legislation." The term does not include: Publication of nonpartisan research, giving advice or assistance to a government at its request, appearing before a legislative body on an issue affecting the existence, powers, duties, or taxable status of the organization, communicating with bona fide members (as long as they are not directly urged to communicate with or incite others to communicate with a government body), and communications with government bodies -- such as license applications -- that are not directed at influencing legislation.

as a Congressional decision not to subsidize lobbying activity. It is an affirmative penalty on those § 501(h) nonprofit organizations that lobby too much. Withdrawal of reduced postal rate eligibility would thus be a less serious deprivation than the one in § 4911. (On the other hand, of course, the tax applies only to those organizations that have elected to be allowed some lobbying activity without losing tax-exempt status; it is possible to think of the tax as a quid pro quo for this relaxation of the rules.)

Congress' decision to treat grass roots lobbying on all fours with the more traditional direct approach to legislators is likewise a useful precedent, since a substantial amount of political advocacy mail sent at nonprofit rates appears to fall within the "influencing legislation" definition of 26 U.S.C. § 4911(d)(A), quoted above. See Tables 7-8, 12-14 in the principal report. While it might be thought that inciting the public to apply pressure to a legislature is simply one manifestation of the First Amendment right to petition, it is within the established definition of "lobbying." In United States v. Harriss, 347 U.S. 612 (1954), which upheld the Regulation of Lobbying Act, 2 U.S.C. §§ 261 ff., the Court said:

> . . . we believe this language should be construed to refer only to "lobbying in its commonly accepted sense" -- to direct communication with members of Congress on pending or proposed federal legislation. The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign. 10/

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10 . . . Both [Senate and House reports] declared that the Lobbying Act applies "chiefly to three distinct classes of so-called lobbyists:

"First. Those who do not visit the Capitol but initiate propaganda from all over the country in the form of letters and telegrams, many of which

> have been based entirely upon misinformation as to facts. . . . "

347 U.S. at 620-621 (emphasis added). So construed, the act was upheld as against First Amendment challenges (over, it must be admitted, protests by Justices Douglas, Black, and Jackson). And the reason was not that lobbying was outside the First Amendment, but that a countervailing interest justified some limits on it:

> . . . full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to prevent.
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> * * * *
>
> Under these circumstances, we believe that Congress . . . is not constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection. And here Congress has used that power in a manner restricted to its appropriate end. . . .

347 U.S. at 625-626 (fn. omitted).

This form of argument is a familiar one: the Court is justifying the (somewhat marginal) restraint on speech by pointing to the significant governmental interest it serves and finding that it is narrowly tailored to that interest.[18] In our

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[18] We can presumably take content-neutrality for granted, since the Act applies to all lobbying regardless of subject, point of view, or the identity of the person responsible.

case, the restraint on speech seems less significant.[19] Nothing is forbidden; no disclosure or undue bureaucratic burdens are imposed;[20] there is merely an increase in price owing to the absence of federal subsidy. If Congress decided to withdraw subsidy from lobbying mail sent by nonprofits -- taking "lobbying" to mean what it means in the corresponding Internal Revenue Code provisions -- it would have a somewhat stronger case than even the Lobbying Act presented.

Summary. Having analyzed the problem from all the constitutional viewpoints sketched on pp. 2-3, supra, we can set down these conclusions:

1. It seems mandatory to insure that only political mailings are deprived of the subsidy, and that the right of the otherwise-eligible nonprofit organization to use the reduced rates for nonpolitical activities is not affected. Otherwise the legislation will risk invalidation for overbreadth.

2. It is also vital to insure content neutrality. Most unconstitutional schemes restricting political speech seem to come to grief on this requirement: in particular, it has twice been applied to strike down provisions reducing eligibility for preferred rates. A danger here is that imposing a differential burden on political mail as a class -- regardless of the political viewpoint expressed -- might be attacked in the same fashion as the apparently viewpoint-neutral rule in Consolidated Edison.

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19 The Court in Harriss admitted that a few might be deterred from petitioning Congress for fear of running afoul of the Act, but dismissed the possibility as "indirect" and "too remote" to require overturning the statute. 347 U.S. at 626. Both dissents challenge this view, id. at 632 (Douglas, J.), 635 (Jackson, J.).

20 Cf. FEC v. Massachusetts Citizens for Life, ___ U.S. ___, 55 USLW 4067, 4071 ff. (December 12, 1986), holding the Federal Election Campaign Act provisions for corporate recordkeeping, disclosure, and solicitation limitation unconstitutional as applied to a public-policy group just because it was incorporated.

3. But the danger just suggested can be reduced, if not outright eliminated, by emphasis on the subsidy aspect of the decision and reliance on the Cammarano-TWR principle that failing to subsidize a First Amendment related activity does not amount to denying the First Amendment right. Cases where a whole subject area was banned from discussion seem to have involved affirmative burdens or penalties on expression -- not mere removal of government assistance.

4. Emphasis on the central role of the subsidy naturally suggests that the Government may have an interest (other than the mere suppression of political speech) in eligibility restriction. Budgetary economy is an obvious candidate.

5. The budget argument is clearly not wrong, but it can be materially strengthened if what is desired is to curb "lobbying" mail -- i.e., the use of subsidized mailings on a large scale to generate letters, cards, and other messages to Congress (or other public bodies) in support of the sending organization's interests. This is so because --

a. There is an existing definition of lobbying which includes that activity and is pretty clearly above constitutional challenge. Both the Internal Revenue Code provisions governing tax aspects of nonprofits' political activities, and the Lobbying Act upheld in Harriss, contemplate controlling letter-writing campaigns and other grass roots activity.

b. The Harriss case recognized that Congress had an independent interest in regulating, to an appropriate degree, the practice of lobbying (as opposed to other forms of political speech having, perhaps, less capacity to mislead or to make financial resources the measure of political strength).

This interest and the budgetary one mentioned above can coexist, and both would support an appropriately designed restriction on eligibility.

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